

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, Lucknow BENCH

OA/TA/RA/CP/MA/PT ...248/90...of 20.....

G. P. Guvarkar Applicant(S)

Versus

C. O. F. B. Respondent(S)

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Certified that the file is complete in all respects.

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Signature of S.O.

Signature of Deal. Hand

07/8/12

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Original Application No.248 of 1990.

Today, the 15th day of February, 1995.

HON. MR.JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

HON. MR. V.K. SETH, ADMINISTRATIVE MEMBER.

G.p. Srivastava,
son of late Shri G.S.Lal,
aged about 59 years
(retired as Assistant Manager,
Forms, Postal Store Depot,
Lucknow),
resident of 191,
Dugawan, Lucknow-226 018. ::::: Applicant.

BY ADVOCATE SHRI P.K.SRIVASTAVA.

VERSUS

1. Union of India,
through Secretary,
Government of India,
Ministry of Communications,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Union of India,
through Secretary to
Government of India,
Department of Personnel &
Training, New Delhi.
3. The Chief Post Master General,
U.P. Circle, Lucknow.
4. The Director,
Postal Services,
Lucknow Region,
Lucknow.
5. The Senior Superintendent
of Posts, Lucknow-226 003.
6. The Superintendent,
Postal Stores Depot,
Lucknow-226 001. ::::: Respondents

BY ADVOCATE DR. DINESH CHANDRA.

O R D E R (Oral).

JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

We have heard the learned counsel for the

.....2/-

1
62

parties. Through this O.A. the applicant has challenged the validity of an order dated 29-9-1988, which is Annexure-6 to the O.A. By this order the President of India is purported to have reviewed the case suo moto on the ground that the charges brought against the applicant were not properly drafted keeping in view various aspects of the case. The case was, therefore, remitted back to the disciplinary authority for de-novo proceedings under Rule 14 of the C.C.S.(C.C.A.) Rule, 1965 right from the stage of issue of charge sheet. There is a controversy between the parties. The applicant's case is that since the President has exercised the power of reviewing the case suo moto, it could have only been passed under Rule 29-A of CCS(CCA) Rules, 1965. On the contrary the respondents stand in the C.A. and which was urged by the learned counsel for the respondents before us is that this order was passed in exercise of power under Rule 29(1)(c) of the said Rules. Rule 29 provides for revision of the orders passed while Rule 29-A provides for review. In view of the intrinsic evidence, the use of the words that the President has reviewed the case suo moto, there can be no manner of doubt that the impugned order was purported to have been passed in exercise of power under Rule 29-A and not under Rule 29(1)(i).

2. The learned counsel for the applicant next submitted that the ground on which the case has been reviewed suo moto does not fall within the purview of Rule 29-A of the said Rules. We find force in the said submission. Accordingly in view of the discussions herein above, the O.A. deserves to be allowed and it is hereby allowed. The order dated

29/9/1988 passed by the Assistant Director(Vigilence)
+ consequential proceedings held in pursuance thereof
contained in Annexure-6, ~~is~~ quashed. We, however,
~~shall~~ make it clear that the quashing of the said
order will not off set the orders of punishment
passed by the disciplinary authority and as modified
by the appellate authority. Costs easy.

✓ 150
MEMBER(A)

Bo. J. K. Singh
VICE-CHAIRMAN.

C. H. R. 2418/90

(X/2)

15/2/95.

HON'BLE MR. JUSTICE B.C. SAKSENA, V.C.
HON'BLE MR. V. K. SETH, MEMBER(A)

Heard Shri P.K. Srivastava, learned counsel
for the applicant and Dr. Dinesh Chandra,
learned counsel for the respondents.
Judgment dictated in the open court.

W K
MEMBER(A)

VICE-CHAIRMAN.

1894

Hon Mr. L. K. Selk. Hon.
Hon Mr. D. C. Selk. & Mr.

(XX)

Re: I. K. Selk. for applicant
Hon Mr. L. K. Selk. it is learnt
has gone to hospital along with
Hon Mr. Selk. who become
extremely ill. has been 5-10 days

Th

W. K.
H. M.

5/10/94

Hon Mr. C. W. L. B. & Selk. v.
Hon Mr. L. K. Selk. & Mr.

on the request of
Hon Mr. Selk. for the
applicant to be that
can be 25-10-11
for leaving

Bel

1894

Letter to the Hon DB

on 21/12/94 for leaving

BC

21/12/94

Re: Selk. & DB

to 15/2/95

~~Re: Selk. & DB~~

for

ON: 248/90

2) 2.5.4.93

Hon'ble Mr. K. Obayya, AM
Hon'ble Mr. A. S. N. Prasad, JM

As the Counsel for
the applicant is no more,
notices may be issued to
the applicants either to
engage some other Counsel
or to plead the case in
person.

List this case on

3.8.93.

JM

AM

check applicant
received reply with report
that none have, on given
3) 3.8.93

STO

24/5/93

27.9.93

STO

22.11.93

STO

23.11.93

24/11/93

25/11/93

26/11/93

27/11/93

28/11/93

No filing of D.M
copy to 27.9.93

STO

Case not reached copy
to 23.11.93

STO

No filing of D.M copy
to 5.1.94

STO

No filing of D.M copy
to 23/2/94

STO

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW

(12)

ORDER SHEET NO. --

OFFICE REPORT

ORDER

O.A./T.A. NO. 248/906

22.12.92

No. Attup order to 4.2.93

2

04/2/93

Hon'ble Mr. S.A. Pasand J.M.

Case called on 04/2/93. Dr. S. Chandra, learned counsel for the respondent is present. None appears on behalf of the applicant. Learned counsel for the respondent states that the matter is solved in this case to require consideration by Division Bench.

Let this case for hearing and disposal on 25/2/93 before Division Bench.

J.M.

CR-
544
3/2/93

22/1/93

GA 240-90L

Sl. No.	Date	Office Report	Orders
		11.11.91	<p>Mr. Mr. A.B. Genter? At</p> <p>Mr. Mr. S.W. Probst. - Jim</p> <p>Consul for respondents in</p> <p>not present case is</p> <p>appointed 10.12.91</p> <p>Jim.</p>
		10.12.91	<p>Can not receive Atty. to</p> <p>27.2.92</p> <p>Atty. VC</p>
		27.2.92	<p>No sitting of D. B. J.</p> <p>27.4.92</p>
		27.4.92	<p>No sitting of Atty. 25.5.92</p>
		25.5.92	<p>Case of - V. B. J. to</p> <p>3.6.92</p>
		3.6.92	<p>No sitting of Atty. to</p> <p>1.9.92</p>
		1.9.92	<p>No sitting of D. B. J.</p> <p>Atty. to 4.11.92</p>
		4.11.92	<p>No sitting of D. B. J.</p> <p>Atty. to 12.12.92</p>

8/11/90

Hon. Mr. M. Y. Baidya - AM.
Hon. Mr. D. K. Agrawal - JM.

due to resolution of Bar
Association case is day

9. 11. 90

9. 11. 90 Hon. Mr. M. Y. Baidya, AM.
Hon. Mr. D. K. Agrawal, JM.

Ry. S. Srinivasa for applicant
Dr. D. Chandra for respondents
Admit.

①
D.O.L.

OR

Notice was

on Dr. D. Chandra
noticed in court

No reply filed

S & K

Short counter has
been filed by the respondents
for the purpose of interim
relief. But detailed counter
be filed within 4 weeks
& replies may be filed within
2 weeks thereafter next to
hearing on 7-1-91.

As regards interim relief, we have
been informed that the leave bench warrant
and C.P. has already been released
or orders passed for releasing the
same. As regards pension, we are of
the opinion that the same cannot be
released pending enquiry. As to
the Bank can retirement & gratuity
we are of the opinion that the same
can't be released. Let it be released forthwith.

We therefore direct that the same
be released. Copy of the order to be given
to counsel for applicant.

Do

JM.

The
Dm

**CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW**

Registration No. 248 of ~~1989~~ 1992 (C)

31/3/92

APPLICANT(S) C. P. Srivastava

RESPONDENT(S) V. C. ?

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent? yes
2. a) Is the application in the prescribed form? yes
b) Is the application in paper book form? yes
c) Have six complete sets of the application been filed? yes
3. a) Is the appeal in time? yes
b) If not, by how many days it is beyond time? N.A.
c) Has sufficient cause for not making the application in time, been filed? yes
4. Has the document of authorisation/ Vakalatnama been filed? yes
5. Is the application accompanied by S.D./Postal Order for Rs.50/- yes
6. Has the certified copy/copies of the order(s) against which the application is made been filed? yes
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application been filed? yes
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly? yes
c) Are the documents referred to in (a) above neatly typed in double sapre? yes
8. Has the index of documents been filed and paging done properly? yes
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application? yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal? No

Particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/separate copies signed ?
12. Are extra copies of the application with Annexures filed ?
 - a) Identical with the Original ?
 - b) Defective ?
 - c) Writing in Annexures
13. Nos. _____ pages Nos _____ ?
14. Have the file size envelopes bearing full addresses of the respondents been filed ?
15. Are the given address the registered address ?
16. Do the names of the parties stated in the copies tally with those indicated in the application ?
17. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
18. Are the facts of the case mentioned in item no. 6 of the application ?
 - a) Concise ?
 - b) Under distinct heads ?
 - c) Numbered consecutively ?
 - d) Typed in double space on one side of the paper ?
19. Have the particulars for interim order prayed for indicated with reasons ?
20. Whether all the remedies have been exhausted.

yes

8/2

yes

yes

yes

yes

yes

yes

yes

yes

yes

yes

directly

3/8/4

FORM - I

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
(CIRCUIT BENCH), LUCKNOW.

U.A. No. 258 of 1990. (L)

G.P. Srivastava .. Applicant
Versus
Union of India & others .. Respondents

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985.

Title of the case : Non-payment of Retirement Benefits
consequent of illegal Disciplinary
Proceedings.

I N D E X

<u>Sl.No.</u>	<u>Description of documents relied upon</u>	<u>Page Nos.</u>
1.	Application	1 to 21
2.	Copy of charge sheet dated 1.12.1984 (Annexure 1)	22-23
3.	Copy of replies of charge sheet dated 10.12.1984 (Annexure 2)	24
4.	Copy of punishment Order dated 4.3.1986 (Annexure 3)	25-27
5.	Copy of appeal dated 14.4.1986 (Annexure 4)	28-30
6.	Copy of Appellate Authority letter dated 30.11.1986 reducing punish- ment to censure (Annexure 5)	31-32
7.	Copy of Review order dated 29.9.1988 (Annexure 6)	33
8.	Copy of charge sheet under rule 14 dated 2.1.1989 (Annexure 7)	34-38
9.	Copy of denial of charges dated 10.1.1989 (Annexure 8)	39
10.	Copy of letter dated 18.1.1989 appointing Enquiry Officer (Annexure 9)	40

<u>Sl.No.</u>	<u>Description of documents relied upon</u>	<u>Page Nos.</u>
11.	Copy of letter dated 30.3.1989 to the President (Annexure 10)	41-43
12.	Copy of letter dated 19.5.1989 to Member (P), New Delhi (Annexure 11)	44
13.	Copy of letter dated 31.7.1989 withholding the petition to President (Annexure 12)	45
14.	Copy of sanction of Gratuity by Director, Postal Accounts (Annexure 13)	46
15.	Copy of application for payment of leave encashment dated 5.9.89 (Annexure 14)	47
16.	Copy of sanction of provisional pension dated 31.8.1989 (Annexure 15)	48
17.	Vakalatnama	49

Lucknow:

Dated August 3, 1990.

R.S. Srivastava

SIGNATURE OF THE APPLICANT

through R.S. SRIVASTAVA
Advocate

Counsel for the Applicant

Address: 4/553, Vikasnagar,
Kursi Road, LUCKNOW.

3/5/92
[Signature]
21/11
[Signature]
118

Date of Filing :
or
Date of receipt by post :
Registration No. : O.A. No. 248/90 (L)

SIGNATURE
for REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH),
LUCKNOW.

O.A. NO. 248 of 1990

G.P. Srivastava, son of late Shri
G.S. Lal, aged about 59 years
(retired as Assistant Manager,
Forms, Postal Store Depot, Lucknow)
resident of 191, Dugawan, Lucknow-
226 018.

.. Applicant

Versus

- Bhaskar*
1. Union of India through the
Secretary, Government of India,
Ministry of Communications, Depart-
ment of Posts, Dak Bhawan, Sansad
Marg, New Delhi.
 2. Union of India, through the
Secretary to Government of India,
Department of Personnel & Training,
New Delhi.
 3. The Chief Post Master General,
U.P. Circle, Lucknow.

4. The Director, Postal Services,
Lucknow Region, Lucknow.

5. The Senior Superintendent of
Posts, Lucknow - 226 003.

6. The Superintendent, Postal Stores
Depot, Lucknow - 226 001.

.. Respondents.

Details of Application

1. Particulars of the order against ^{which} the application is made :

(1) The Review Order dated 29.9.1988, issued by the Government of India, Ministry of Communication Department of Posts, New Delhi, under signatures of Assistant Director General (Vig.), received by the Applicant on 17.11.1988 under which denovo disciplinary proceedings under rule 14 of CCS (CCA) Rules, 1965 have been initiated against the Applicant.

(2) Rule 29A of the CCS (CCA) Rules, 1965.

2. Jurisdiction of the Tribunal

The Applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation

The Applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

4.1. That the Applicant was appointed on the post of Postal Assistant and joined that post on ~~XX~~ 1.6.1952.

4.2. That the Applicant was promoted on the post of Lower Selection Grade in the month of November 1980.

4.3. That the Applicant retired from service on attaining the age of superannuation w.e.f. 31.8.1989. Before the retirement he had held the post of Assistant Manager, P.S.D., Lucknow.

4.4. That the Annual Confidential Reports of the Applicant were throughout found upto the mark and no adverse remarks were ever communicated to him.

4.5. That while the Applicant was in service and was holding the post of Assistant Manager, P.S.D., Lucknow, he was served with a charge sheet vide letter No. SPSP/Disc-16/G.P.Srivastava dated 1.12.1984 (Copy of is being filed as Annexure-1). The said charge sheet was signed by Shri A.D. Pandey, Superintendent, Postal Stores Depot, Lucknow. It was proposed to take action under Rule 16 of the CCS(CCA) Rules, 1965.

4.6. That the following three charges were levelled against the Applicant :

(i) Draft N.I.T. put up by the dealing Clerk

Srivastava

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proposing 63352 bags unserviceable was forwarded to the Superintendent P.S. Lucknow under his initial dated 29.5.81 in file No. SD/566/U/s bags/80-81 without pointing out that only 38052 Canvas bags were declared as unserviceable by the disposal committee. As such, the excess no. 25300 bags were notified to be sold out without these bags being declared unserviceable by the members of the Disposal Committee.

(ii) Total no. of unserviceable bags as on 30.11.81 was 30018. On 1.12.81, 635 bags were received making the total as 30853 but Shri D.K. Chatterjee, X R.D.B. Clerk assessed the balance as 3,00,853 which was initiated by Shri G.P. Srivastava, A.M. in token of having verified the correctness of account of bags. This incorrect balance was carried onward and initialled by Shri Srivastava, A. . upto 31.12.81.

(iii) He put draft N.I.T. at 74/c of file No. SD/566/U/s-bags/80-81 in which unserviceable bags were shown as 2,43,555 vide his office note dated 19.1.82. The bags declared unserviceable were not got approved as such by the members of Disposal Committee constituted vide C.O. letter No. Tech A/M-5-124/80 dated 20.2.80 before putting the case before the Supdt. P.S.D. for approval of the draft N.I.T.

Srivastava

In acting in the aforesaid manner, Shri G.P. Srivastava, Asstt. Manager, exhibited gross negligence and lack of devotion to duty and is alleged to have contravened the provisions of Rule 3-1(I)(II) of the C.C.S.(Conduct Rules), 1964 as also Rule 3(2) ibid to

ensure the integrity and devotion to duty of the Clerk under him.

4.7. That the Applicant submitted the replies to the charge sheet on 10.12.1984 to the Superintendent, Postal Stores Depot, Lucknow, and pleaded not guilty. The copy of the replies given is being filed as annexure-2.

4.8. That the punishing authority, Shri D.N. Joshi, Senior Superintendent of Post Offices, Lucknow Division, Lucknow, vide Memo No. E/G.P. Srivastava dated 4.3.1986 imposed the penalty of stoppage of one increment for a period of one year without cumulative effect. The copy of the said punishment order is being filed as annexure-3.

4.9. That aggrieved by the punishment order dated 4.3.1986, the Applicant preferred an appeal dated 14.4.1986, addressed to the Director, Postal Services, Lucknow Region, Lucknow, the Appellate Authority. A copy of the said appeal dated 14.4.1986 is being filed as Annexure-4.

4.10. That the Appellate Authority vide Memo No. RIL/APP/92/86/13 dated 30.11.1986, issued under the signatures of Shri B.P. Singh, Director Postal Services, Lucknow Region, Lucknow, partially admitted the appeal and modified the penalty of stoppage of increment for one year without cumulative effect to that of censure. A copy of order dated 30.11.1986 is being filed as Annexure-5.

4.11. That thus the disciplinary proceedings under rule 16 of CCS(CCA) Rules, 1965 culminated in punishment of censure.

4.12. That suddenly the applicant was served with a review order dated 29.9.1988 which was received by him on 17.11.1988. This order was issued under No. 7-30/86-Vig.II by Government of India, Ministry of Communication, Department of Posts, New Delhi, and was signed by Assistant Director General (Vig.). It contemplated that the punishment of censure did not commensurate with the gravity of the charges and circumstances of the case. It further laid down as under :

"It is observed that the disciplinary authority have held the imputations proved against the officer which were not properly drafted and imposed a penalty which does not commensurate with the charges proved against Shri Srivastava.

In view of the foregoing the President has carefully considered the proceedings in this case and reviewed the case suo-moto. The president feels that the charges brought against the Officer were also not properly drafted keeping in view the various aspects of the case. The president therefore hereby remits the case back to the disciplinary authority for de-novo proceedings against Shri X G.P. Srivastava under rule 14 of the C.C.S.(CCA), Rules, 1965 right from the stage of issue of charge sheet."

Shri Srivastava

A copy of the Review Order is being filed as Annexure-6.

4.13. That the said Review order is defective, erroneous, illegal and smacks of arbitrariness to the prejudice and detriment of the Applicant.

4.14. That the said Review has been done suo-moto by the President under Rule 29A of the C.O.S.(CCA) rules, which inter-alia lays down as under :-

"The President may, at any time, either on his own motion or otherwise, review any order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought to his notice."

Thus it will be seen that the Review order dated 29.9.1988 has been passed arbitrarily as neither any new material nor any evidence has come to the notice which could affect the nature of the case. The Review order thus suffers from the vice of legal infirmity and is contrary to provisions of Rule 29A. It has been held by the Hon'ble Tribunal, Hyderabad, in N. Rama Rao Vs. President, CSIR & others, reported in 1988(4) SLJ, Page 370, as there was no new material, there could be no Review.

4.15. That it is now well settled law that Review Order should also be a speaking order. The review order dated 29.9.1988 is completely non-speaking order as it does not specify the source and the reasons for Review. Merely stating that the charges were not

drafted properly is no ground for review under Rule 29A of C.C.S.(CCA) Rules, 1965 and the order which is passed for filling up the gaps can not be termed as Review Order in the eye of law. The case of Bhupati St Kumar Sardar Vs. Union of India, ATC 1989, Vol.10, page 209 is relevant on this point which may kindly be seen.

4.16. That the Review Order has been passed for starting de novo proceedings under Rule 14 of CCS(CCA) Rules, 1965 whereas the earlier proceedings were initiated under Rule 16 of CCS(CCA) Rules, 1965. This ~~xxx~~ will result in enhancement of punishment. The Applicant has not been given any reasonable opportunity or show cause notice which is clearly a flagrant breach of principles of natural justice. This clearly shows the misuse of power given to Respondents and the arbitrariness which also violates the principle of equity and fairplay.

4.17. That starting de-novo proceedings without quashing the earlier proceedings is wholly unjustified and can not be sustained in the eye of law. Hon'ble Central Administrative Tribunal, Calcutta, in their judgment in case Bhupati Kumar Sardar Vs. Union of India & others, ATC 1989 (10 P. 209, have laid down the law as under :

"It is quite well settled that without dropping the earlier charge sheet and without stating adequate reasons for starting a fresh disciplinary proceeding, a fresh charge-sheet

Srinivasan

can not be issued".

In the case of the Applicant fresh charge-sheet was issued on 2.1.1989 without quashing the earlier charge-sheet dated 1.12.1984.

4.18. That the said Review Order also suffers from the vice of latches and delay. The punishment order was issued on 4.3.1986 and Review Order has been issued on 29.9.1983 i.e., approximately after 2½ years, which shows the callousness on the part of Respondents. The Review Order, if any, should have been passed within six months as laid down in Joney Vs. Director of Telegraphs 1976 KLT. Inordinate delay on the part of the Respondents not only defeated the purpose of Review but also resulted in acute mental agony ~~XXXX~~ to the Applicant. In service jurisprudence the principle of fairplay and equity plays a vital role. Conducting the Review after 2½ years suffers from latches and is also detrimental to the interest of the applicant.

4.19. That rule 29A of the C.C.S.(CCA) Rules, 1965 has vested the President with unbridled and unfettered powers of Review of any order and at any time. No time limit has been laid down for such Review which is not conducive to the larger interests of the Central Civil Servants. The delegation of excessive powers in the President without guarding the vast interest of Central Civil Servants in arbitrary, illegal and unconstitutional and Rule 29A of the said rules needs to be struck down as invalid by the Hon'ble Tribunal.

4.20. That on the basis of the Review dated 29.9.1988 the Applicant was served with a fresh charge-sheet dated 2.1.1989. The said chargesheet was signed by the Superintendent P.S.D., Lucknow. It contained the same charges as were contained in the original charge-sheet issued on 1.12.1984. The ~~XXXXXX~~ copy of this charge sheet dated 2.1.1989 is being filed as Annexure-7. The said chargesheet contained the following charges :-

(i) That the said Shri G.P. Srivastava while functioning on the post of Asstt. Manager (RDB), O/o Supdt. P.S.D. Lucknow during the year 1981 is alleged to have failed to point out the Supdt. P.S.D. Lucknow that only 38052 C bags were declared as unserviceable as per minutes of disposal committee dated 14.1.1981 at 2/N of Sppdt. PSD File No. SD/566/1980-81 before putting up draft NIT for disposal of 63352 unserviceable C bags at 1/c in file No. SD/566/U.S bags/80-81/82-83 vide his note dated 29.5.81 at 1/N of the said file causing inclusion of 25361 bags for disposal which were not examined by aforesaid disposal committee and thereby failed to maintain devotion to duty as required of him under the provision of rule 3(1)(ii) of CCS (Conduct) Rules 1964.

(ii) That the said Shri G.P. Srivastava while functioning on the aforesaid post during the aforesaid period is alleged to have failed to detect casting of wrong balance of unserviceable bags on 1.12.81 in the stock Register of RDB at page 179 made by Shri D.K. Chaterji the then RDB Clerk PSD Lucknow as 300853 bags instead 30853 bags

Srivastava

while signing the said entries in the capacity of checking official and thereby failed to maintain devotion to duty as required of him under the provisions of Rule 3(1)(ii) of CCS (Conduct) Rule, 1964.

(iii) That the said Shri G.P. Srivastava while functioning on the aforesaid post during the year 1982 is alleged to have failed to point out the Supdt. P.S.D. Lucknow about 24355 unserviceable C. Bags noted by him in the draft JIL No. SD/566/UC bags/81-82 dated 19.1.82 at 74/c of Supdt. P.S.D. file no. SD/566/US/Bags/80-81/82/83 through his note dated 19.1.82 at 28/N of the aforesaid file that those bags were not examined by the constituted disposal committee before taking up the case for their disposal and thereby failed to maintain devotion to duty as required of him under the provision of Rule 3(1)(ii) of CCS(Conduct) Rules 1964.

4.21. That the Applicant, vide his letter dated 10.1.1989, addressed to the Superintendent, PSD, Lucknow, denied all the three charges and stated that they were baseless. A copy of the said letter dated 10.1.1989 is being filed as Annexure-8.

4.22. That one Shri K.C. Misra, SSPO, Faizabad, was appointed Enquiry Officer vide Memo No. PSD/Staff/Disp-4/88 dated LWI dated 18.1.1989 to enquire into the charges framed against the Applicant. It was specifically mentioned in the endorsement copy of Shri Misra that the enquiry should be completed before the date of retirement of the Applicant i.e., 31.8.1989.

Srivastava

The copy of the letter dated 18.1.1989 is being filed as Annexure-9. It was emphasised in C.V.C. letter No. IQIDSP/3 dated 19.6.1987 (published on pages 116-117 in Swamy's Annual 1987) that with a view to cut down delays in disciplinary cases copies of all documents relied upon and the statement of witnesses cited on behalf of the disciplinary authority be supplied to Government servant alongwith charge-sheet wherever possible. The copies of documents and list of witnesses was not supplied to Applicant alongwith chargesheet. The Enquiry Officer thereafter fixed the dates as under :-

15.2.1989, 16.6.1989, 24.7.1989, 26.9.1989, 4.12.1989, 22,23.12.89. It was only on 4.12.1989 that the relevant documents could be inspected. Thereafter the Enquiry Officer was given the list of defence witnesses and additional documents required by the Applicant. The last dates fixed for enquiry (22 & 23.12.1989) ^{were} postponed and thereafter no date has been fixed for conducting the enquiry though nearly seven months have since elapsed after 22,23.12.1989. A letter No.EO-4/90 dated 19.7.1990 written by Shri B.C. Joshi, Enquiry Officer, received by Applicant on 25.7.1990 indicates that Shri B.C. Joshi has been appointed as Enquiry Officer in place of Shri K.C. Misra. Culpable delay on the part of the Enquiry Officer for conducting enquiry and by not finalising the same before 31.8.1989, the date of retirement of applicant, has resulted in acute mental agony to him and his legitimate and legal claims due as Retirement Benefits have been withheld to the detriment of the interest of the Applicant.

4.23. That denovo proceedings were started

against the applicant under rule 14 of C.C.S.(CCA) Rules 1965 by issuing the chargesheet dated 2.1.1989 on the basis of Review Order dated 29.9.1988. The Hon'ble Central Administrative Tribunal, Jabalpur, in case of Ram Villan Paroha Vs. Union of India, 1989(10) ATC P.835, have held that replacement of proceedings under rule 14 as a result of review was not permissible. Since the proceedings have continued even after the retirement of the applicant, major punishment under rule 14 could not be awarded after retirement i.e., ~~XXXX~~ the applicant could neither be dismissed, nor removed nor be compulsorily retired nor any reduction to a lower stage in time scale nor reduction to lower time scale was at all possible. The charge sheet dated 2.1.1989 thus becomes redundant and further proceedings against the applicant will be deemed to be untenable.

4.24. That the applicant sent a letter dated 30.3.1989 to the President of India, New Delhi, through proper channel, and endorsed the copies to the Member(P) Department of Posts, Dak Bhawan, New Delhi, Chief Post Master General, U.P., Lucknow, the S.S.P.O., Lucknow and the Superintendent, P.S.D., Lucknow and prayed for dropping the proceedings under Rule 14 of the C.C.S.(CCA) Rules, 1965. He also sent a reminder dated 19.5.1989 to the Member (P), Department of Posts, Dak Bhawan, New Delhi, but of no avail. The applicant was informed by Superintendent, P.S.D., Lucknow, vide his letter dated 31.7.1989, which received on 14.8.1989, that the Director of Posts, Lucknow, had ordered to

K. Maslana

withhold the petition dated 30.3.1989, addressed to the President, New Delhi. The copies of letters dated 30.3.1989, 19.5.1989 and 31.7.1989 are being filed as Annexures 10, 11 and 12.

4.25. That Article 20(2) of the Constitution of India lays down that no person shall be prosecuted and punished for the same offence more than once. The Supreme Court have also held in *K.R. Deb Vs. Collector of Central Excise, Shillong*, AIR 1971, SC 1447, that de novo enquiry into the same set of charges is bad. The applicant was given a charge sheet under rule 16 of CCS (CCA) Rules, 1965 on 1.12.1984 and was punished by the punishing Authority and one increment was stopped for a year without cumulative effect. The Applicant had preferred an appeal to the Appellate Authority on 14.4.1986 and the Appellate Authority, vide letter dated 30.11.1986, had reduced the penalty of ~~one~~ stoppage of one increment to that of censure. The said censure entry became effective on 30.11.1986 and the applicant has already suffered the effect of that censure entry. A further charge sheet was again issued under rule 14 of CCS(CCA) Rules, 1965 on the same set of charges vide letter dated 2.1.1989 and Inquiry Officer was appointed vide letter dated 18.1.1989. The Enquiry Officer had started the inquiry while the applicant was in service and is being continued after retirement of the applicant. Article 20(2) of the Constitution of India completely bars the punishment for the same offence again and Supreme Court has also

Bhaskar

held the same view in the case of K.R. Deb, cited above. The whole proceedings viz. the charge sheet and the appointment of Enquiry Officer and continuance of enquiry for the same charges for which the proceedings had already culminated in punishment of 'censure', are therefore illegal and cannot thus be sustained in the eye of law and are liable to be quashed. A similar view has also been held in *Mirata Behara Vs. Union of India & other*, ATC 1989, P. 99.

4.26. That the Efficiency bar of the Applicant in the scale of Rs.1400-40-1800-EB-50-2300, raised his pay from Rs.1800.00 to 1850.00 fell due on 1.11.1988. Departmental Promotion Committee, as per rules, was to be convened in the month of October 1988. Till then no charge sheet was served on the Applicant. It was served on 2.1.1989 and the ~~XXXXX~~ Disciplinary proceedings will be deemed to have commenced on this date only (2.1.1989). In spite of this fact, the E.B. was not cleared and was withheld to the detriment of the applicant. The provisional pension was authorised on the basis of basic of Rs.1800.00 whereas it ought to have been authorised on the basis of basic pay of Rs.1850.00 instead of Rs.1800.00. Withholding the Efficiency Bar is thus contrary to rules and needs to be cleared together with authorisation of pension/provisional pension on the basis of his basic pay of Rs.1850.00 to which the applicant was entitled with effect from 1.11.1988 as subsequent developments will not bar the crossing of the E.B. in question.

Bruastani

4.27. That since the disciplinary proceedings were started while the applicant was in service i.e., the charge sheet for major punishment under rule 14 of CCS(CCA) Rules, 1965 was issued on 2.1.1989 and they are still continuing after the date retirement (31.8.89), hence the proceedings shall be deemed to have continued under rule 9 of the CCS Pension Rules, 1972. The said rule 9 contemplates that the President can withhold or withdraw pension and can order to recover the amount of of any pecuniary loss caused due to negligence of the Government servant. The charge sheet dated 2.1.1989 contained no charge of any pecuniary loss caused to Government by applicant. The amounts of DCRG and leave encashments due on 1.9.1989 were arbitrarily withheld. The amount of Rs.29,700.00 was sanctioned by Director of Accounts (Postal), Lucknow as DCRG on the basis of papers sent to them in April 1989 by the Superintendent, PSD, Lucknow. A copy of sanction is being filed as Annexure-13. The amount of DCRG was not drawn and disbursed to the applicant though the Superintendent, PSD, Lucknow, knew fully well that there was no charge of any pecuniary loss against the applicant. Not only that, the amount of leave encashment of 240 days due to the applicant was also not disbursed after 31.8.1989, the date of retirement. Request was made for payment of leave encashment, vide letter dated 5.9.1989. A copy of this letter is being filed as Annexure-14. The applicant was deprived of all retirement benefits viz. his pension was not finalised and the applicant even after about one year of retirement is drawing provisional pension. A copy of the

Encl. 13

letter sanctioning Provisional Pension is being filed as Annexure-15. The benefit of commutation of 1/3rd pension could also not be availed by the Applicant of non-finalisation of his actual pension. The payment of G.P.F. was also withheld. It is stated that the Applicant had submitted all the requisite forms for the above claims in time. Thus withholding of DCRG, leave encashment and G.P.F. was wholly unjustified when there was no charge of pecuniary loss caused to Government by the Applicant. The amounts pertaining to claims of DCRG, leave encashment and G.P.F., therefore, need to be released by Respondents together with interest @ 18% since 1.9.1989 till date of payment.

4.28. That the first cause of action arose on 30.9.1988 ~~when~~ against the Review Order dated 29.9.1988. The second cause of action arose on 3.1.89 against the second charge sheet was issued on 2.1.1989 and the final cause of action arose on 1.9.1989 when after retirement on 31.8.1989, the retiral benefits which were to be paid on 1.9.1989 (pension, G.P.F., leave encashment, Commutation of pension and DCRG) were with-held. The cause of action thereafter is arising from day-to-day as the enquiry scheduled to be completed before 31.8.1989, is still continuing.

5. That aggrieved by the illegal Review Order under Rule 29A of C.C.S.(CCA) Rules, 1965, intimation of Disciplinary Proceedings by issuing a fresh charge sheet on the said charges, non-completion of the enquiry by Enquiry Officer before 31.8.1989 as ordered for, continuing the enquiry after retirement,

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K. N. Wasthwa

withholding retiral benefits and also withholding the petition to the President, the Applicant has no other alternative except to invoke the jurisdiction of this Hon'ble Tribunal for redressal of his legitimate grievances and for enforcing his legal and constitutional rights, inter-alia, on the following grounds:

GROUND

- (i) Because the Review Order dated 29.9.1988 is cryptic, illegal and invalid in the eye of law.
- (ii) Because the Review Order is a non-speaking order and has been issued without application of mind.
- (iii) Because the Review Order suffers from vice of latches and delay.
- (iv) Because Review Order does not conform to requirements of Rule 29A of C.C.S. (CCA) Rules, 1965.
- (v) Because de novo proceedings under rule 14 of the said Rules have been started without quashing the earlier proceedings under Rule 16 of the said rules.
- (vi) Because there has been a breach of principle of natural justice.
- (vii) Because there has been violation of Article 20(2) of the Constitution of India.
- (viii) Because the denovo proceedings have resulted

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Bhaskar

in double jeopardy.

- (ix) Because the claims of Leave Encashment, Gratuity, crossing of E.S. and G.P.F. have been withheld illegally.
- (x) Because charge sheet dated 2.1.1989 is based on the same charges as that of dated 1.12.84.

6. Details of the remedies exhausted :

- (i) The applicant addressed the President of India, New Delhi, vide letter dated 30.3.1989 against the Review Order dated 29.9.1988 through proper channel (Annexure-10).
- (ii) Letter dated 19.5.1989 was addressed to the Minister (P), Department of Posts, Dak Bhawan, New Delhi, for stopping the proceedings and praying for speedy disposal of retirement benefits after retirement (Annexure-11).

7. Matters not previously filed or pending with any other court :-

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other bench of the Tribunal nor any such application writ petition or suit is pending before any of them.

S. Vasanth

B. Reliefs sought :

The Hon'ble Tribunal may be pleased to grant the following relief/reliefs:-

- (i) to declare the rule 29A of the C.C.S. (CCA) Rules, 1965 as null and void and the same may be struck down as being wholly arbitrary and unconstitutional for the reason that it crown the President with unfettered and unbridled powers.
- (ii) to quash the Review Order, the charge sheet and the consequential disciplinary proceedings started against the Applicant under Rule 14 of the C.C.S. (CCA) Rules, 1965.
- (iii) to direct the Respondents to finalise the claims of pension, commutation of pension, G.P. Fund, Death-cum-Retirement Gratuity and Leave Encasement togetherwith interest @ 18% since the date of the above claims became due, till the date of their payment.
- (iv) to direct the Respondents to clear the Efficiency Bar from due date togetherwith arrears of pay thus accrued due alongwith interest @ 18% on arrears.
- (v) to allow any other relief/reliefs as deemed just and fit taking into consideration the facts and circumstances of the case.
- (vi) to allow the cost to the applicant.

Shivasana

9. Interim order, if any, prayed for pending final decision on the application, the applicant seeks the following Interim Relief :

The amounts of claims of Leave Encashment, Death-cum-Retirement Gratuity and G.P.F. which were due on 1.9.1989 (after date of retirement on 31.8.1989) may be ordered to be released forthwith by Hon'ble Tribunal, directing the Respondents to disburse the amounts within two months to save the applicant from financial hardships being caused to him.

10. The application is being submitted personally.

11. The particulars of the postal order in respect of the application fee :

Postal Order No. 862 414737 for

Rs. 50.00 dated 30.7.90 issued from

High Court Post Office Lucknow

12. List of enclosures :

As per Index alongwith one postal order as detailed in para 11 and Vakalatnama.

VERIFICATION

I, G.P. Srivastava, s/o late Shri G.S. Lal, aged about 59 years, resident of 191, Dugawan, Lucknow-226 018, do hereby verify that contents of paras 4.12, 4.20, 4.21, 4.23, 4.24, 4.26, 4.28 & 4.32 are true to my personal knowledge and paras 4.13, 4.19, 4.22, 4.25 & 4.25 believed to be true on legal advice and that I have not suppressed any material fact.

LUCKNOW:

Dated August 2 1990

G.P. Srivastava
SIGNATURE OF THE APPLICANT
through R.S. SRIVASTAVA
Advocate
Counsel for the applicant
Address: 4/553, Vikas Nagar,
Kursi Road, LUCKNOW.

G.P. Srivastava Applicant
versus

Union of India & Others Respondents

No.7-30/86-Vig II
Government of India
Ministry of Communications
Department of Posts

Recd on
17/11/88

Annexure 6

Dr. Bhavan,
Sansad Marg,
New Delhi-1.

Dated the 29th September, 1988.

ORDER

Sri G.P. Srivastava, Assistant Manager, Postal Stores Depot Lucknow was issued a memo of charges vide No.SPSD/Disc-16/G.P.Srivastava dated 1st December, 1984 under Rule 16 of the CCS(CCA) Rules, 1965 by the Supt. Postal Stores Depot, Lucknow on account of the various irregularities committed by him in the maintenance of Day Accounts and the matters relating to unserviceable bags while he was working as Assistant Manager (RPT) in the PSD, Lucknow during the period 1981 and 1982. In view of this it was alleged that Sri Srivastava exhibited gross negligence and lack of devotion to duty contravening the provisions of Rule 3(1) (i) and (ii) of CCS(Conduct) Rules, 1964 and also Rule 3(2) ibid to ensure the integrity and devotion to duty of the clerk working under him.

Sri Srivastava submitted his defence statement on 13th December, 1984 after receipt of the memo of charges on 1st December, 1984. The competent disciplinary authority viz. Sr.Supt. of Post Offices, Lucknow Division, Lucknow considered the defence statement submitted by the officer. The disciplinary authority who considered the defence statement held that the charges are conclusively proved for violation of Rule 3(1) (i) and (ii) and Rule 3(2) of CCS(Conduct) Rules, 1964, and imposed upon him the penalty of stoppage of one increment for a period of one year without cumulative effect vide Memo No.R/G.P.Srivastava dated 4.3.86, which on appeal dated 14.4.86 was modified to censure vide Memo No.RDL/APP-92/86/13 dated 30.11.86, and does not commensurate with the gravity of the charges and circumstances of the case.

It is observed that the disciplinary authority have held the imputations proved against the officer which were not properly drafted and imposed a penalty which does not commensurate with the charges proved against Sri Srivastava.

In view of the foregoing the President has carefully considered the proceedings in this case and reviewed the case suo-moto. The President feels that the charges brought against the officer were also not properly drafted keeping in view the various aspects of the case. The President therefore hereby remits the case back to the disciplinary authority for denovo proceedings against Sri G.P. Srivastava under Rule 14 of the CCS(CCA) Rules, 1965, right from the stage of issue of charge sheet.

By order and in the name of the President.

✓ Sri G.P. Srivastava
ASHM Aminabad Park, PO Lucknow.
(Through PCO, U.P.Circle, Lucknow)

(B.M. KAPUR)
Assistant Director General (Vig.)

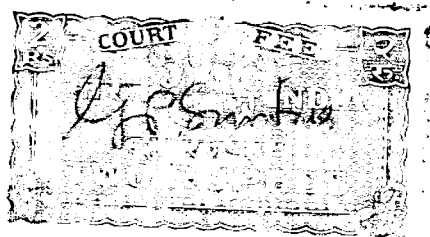
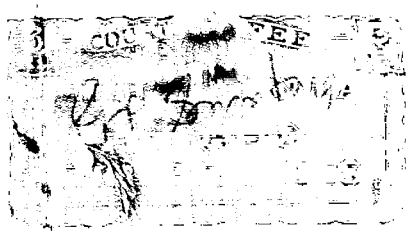
ब अदालत श्रीमान

(बादी अपीलान्ट)

प्रतिवादी [रेस्पाडेन्ट] श्री.....का

महोदय

वकालतनामा



वादी (अपीलान्ट)

Applicant

बनाम (प्रतिवादी रेस्पाडेन्ट)

नं० मुकद्दमा

सन्

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपन्ती ओर से श्री

R.S. Srivastava

वकील

महोदय

एडवोकेट

नाम अदालत	नाम मुकद्दमा नं०	नाम तफरीकन
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को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटाव या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

हस्ताक्षर R.S. Srivastava

साक्षी (गवाह) ... साक्षी (गवाह) ...

दिनांक ... महीना ... सन् १६ ई०

स्वीकृत

In the Central

Circuit Bench, Lucknow

Annexure

DA. NO. of 1990

C.P. Srivastava Applicant
versus

Union of India & Others Respondents

Annexure!

I DEAN POSTS AND

S.P.O. Lucknow - 16/8/89

Office of the
Postal Stores Dept.,

Dated at Lucknow-1/12/89.....

MEMORANDUM

Shri... *C.P. Srivastava* (Designation) *Asst. Manager*
(office in which working) *P.S.D. Lucknow*

is hereby informed that it is proposed to take action against him under Rule 16 of C.C. (CCA) Rules, 1965.

A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed."

2. Shri... *C.P. Srivastava* is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri... *C.P. Srivastava* fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no

representation to make and orders will be liable to passed against Shri... *C.P. Srivastava* ex

4. The receipt of this Memorandum should be acknowledged by Shri... *C.P. Srivastava*

ATTACHED

True copy
TR S Srivastava

(*12/12/89*)
By
Lucknow

To
Shri... *C.P. Srivastava*
Asst. Manager
P.S.D. Lucknow

Srivastava

In the Central Administrative Tribunal

Circuit Bench, Lucknow

Annexure 23

O.A. No: of 1990

G.P. Srivastava Applicant
versus

Union of India & Others Respondents

Statement of imputation of misconduct or misbehavior
on which action is proposed to be taken.

Shri G.P. Srivastava while working as
A.M. (RUB) in the P.S.D. Lucknow is alleged to
have committed the following irregularities.

1) Draft N.I.T. put up by the dealing
clerk proposing 63352 bags unserviceable was
forwarded to the Supdt. P.S.D. Lucknow under his
initial dated 29-5-81 in file No. SD/566/U/s
bags/80-81 without pointing out that only 38052
Canvas bags were declared as unserviceable by
the disposal committee. As such, the excess No.
25300 bags were notified to be sold out without
these bags being declared unserviceable by the
members of the Disposal Committee.

2) Total no. of unserviceable bags as
on 30-11-81 was 30013. On 1-12-81, 835 bags
were received making the total as 30853 but
Shri D.K. Chatterjee, R.D.B. Clerk assessed the
balance as 3,00,853 which was initiated by Shri
G.P. Srivastava, A.M. in token of having verified
the correctness of account of bags. This incorrect
balance was carried onward and initialled by
Shri Srivastava, A.M. up to 13-12-81.

3) He put draft N.I.T. at 74/c of file
No. SD/566/U/s-bags/80-81 in which unserviceable
bags were shown as 2,43,555 vide his office note
dated 19-1-82. The bags declared unserviceable
were not got approved as such by the members
of Disposal Committee constituted vide C.C. letter
No. Tech A/M-5-124/80 dt. 20.2.80 before putting
the case before the Supdt. P.S.D. for approval
of the draft N.I.T.

ATTESTED

True Copy

R. S. Srivastava

In acting in the aforesaid manner,
Shri G.P. Srivastava, Asstt. Manager, exhibited
gross negligence and lack of devotion to duty
and is alleged to have contravened the provisions
of Rule 3-1(I)(II) of the C.C.S. (Conduct Rules)
1964 as also Rule 3 of the C.C.S. to ensure the integrity and
devotion to duty of the clerk under him.

Superintendent

Postal Stores Depot, Lucknow.

G.P. Srivastava

In the Central Administrative Tribunal

Circuit Bench, Lucknow

O.A. No: of 1990

R.P. Srivastava Applicant

versus

Union of India & Others Respondents

Attested

True copy

R. S. Srivastava

The Superintendent
Postal Stores Depot
Lucknow-225001.

Sir,

Kindly refer to your memo No. SP3D/Disc-15/G.P.D. dated 1-12-84 regarding disciplinary action against me under Rule-16 of CCS(CCA) Rules 1965. In this connection I have to state as under:

2: In first para of the chargesheet it has been stated that I forwarded a proposal of 63352 unserviceable bags to the Supdt. PSD without pointing out that only 38052 bags were declared unserviceable by the Disposal Committee making a difference of 25300 bags.

3: Then in second para of the charge-sheet, it is stated that unserviceable bags as on 30-11-81 were 30018 and on 1-12-81, 35 bags were received making the total as 30853 but the balance was assessed as 300853.

4: May kindly see para three of the charge-sheet in which draft N.I.T. was put up for 2,43,555 which were not approved by the Disposal-Committee.

5: Para 1 to 3 of the charge-sheet show that all this was done in file No. 3D/566/u/sbags/80-81.

6: Thus it is seen that although 38052 bags were actually declared unserviceable by the Disposal Committee (para-1 of the charge-sheet). Yet their number is claimed as 30853 in the second para of the charge-sheet (Balance assessed as 300853 against 30853 is a clerical mistake).

7: It is there that the file was submitted to Supdt. PSD at each stage who shared the same responsibility as myself in going into the matters unchecked.

8: There is no mention in the charge-sheet as to what number of bags were actually disposed off and what they included serviceable bags. I feel and find that actually unserviceable bags were actually disposed off observing all formalities and relative record ex-facie shows that number of bags disposed was approved by the Disposal Committee.

Thus it may kindly be seen that there is no violation of Rule-3(i)(1)(ii) and Rule-3(2) of CCS(Conduct) Rules, 1964.

Thanking you,

Yours faithfully

M. 10.12.84

Asstt.

for: PSD

In the Central Administrative Tribunal
Circuit Bench, Lucknow

O.A. No: of 1990

Annexure 25

G.P. Srivastava Applicant

versus

Union of India & Others Respondents

Annexure 3

DEPARTMENT OF POSTS INDIA

OFFICE OF THE

SR. SUPDT. POST OFFICES, LUCKNOW DIVISION, LUCKNOW-226002

Memo: Srivastava dated at Lucknow the 5.2.81

Shri G.P. Srivastava, the then A.M. (RDB)

P.S.D. Lucknow and now ASPM Aminabad Park PO Lucknow
was served with a memo of charges vide Supdt. P.S.D.
memo No. SPSD/Disc-16/GP Srivastava dt. 1.12.84 imposing

imputation of misconduct and misbehaviour as under:-

• Shri G.P. Srivastava while working as
A.M. (RDB) in the P.S.D. Lucknow is alleged to have
committed the following irregularities.

1. Draft N.I.T. put up by the dealing clerk
proposing 63352 bage unserviceable was forwarded to the
Supdt. P.S.D. Lucknow under his initial dt. 29.5.81 in
file No. SD/566/U/S bage/80-81 without pointing out
that only 38052 canvas bage were declared as unservice-
able by the disposal committee. As such, the excess No.
25300 bage were notified to be sold out without these
bage being declared unserviceable by the members of the
Disposal Committee.

2. Total No. of unserviceable bage as
on 30.11.81 was 30013. On 1.12.81, 835 bage were
received making the total as 30853 but Shri D.K. Chatter-
jee, R.D.D. Clerk assessed the balance as 300853 which
was initialed by Shri G.P. Srivastava, A.M. in token of
having verified the correctness of account of bage.
This incorrect balance was carried onward and initialed
by Shri Srivastava, A.M. upto 13.12.81.

3. He put draft NIT at 74/c of file No.
SD/566/U/s-bage/80-81 in which unserviceable bage were
shown as 243555 vide his office note dated 15.1.82.
The bage declared unserviceable were not got approved
as such by the members of Disposal Committee constituted
vide C.O. letter No. Tech A/M-5-124/80 dt. 20.2.80 before
putting the case before the Supdt. P.S.D. for approval
of the draft NIT.

In acting in the aforesaid manner, Shri
G.P. Srivastava, Asstt. Manager, exhibited gross negligence
and lack of devotion to duty and is alleged to have
contravened the provisions of Rule 3-1(I)(II) of the
G.S.S. (Conduct Rules 1964 as also rule 3(2) ibid to
ensure the integrity and devotion to duty of the
clerk under him.

contd....2

Attested
True copy
R.B. Srivastava

G.P. Srivastava

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the disposal of 38052 C.Bags by the Supdt. PSD Lucknow but it did not materialize. Fresh draft NIT was there after put up by the dealing Clerk proposing auction of 63352 unservicable bags. The said proposal was forwarded by Shri G.P.Srivastava while working as AM(RDB) in the PSD Lucknow under his initials dated 29.5.81 in file No. SD/566/U/S bags/80-81. The Disposal had not met after 3.1.81 till 29.5.81 and therefore, approving the proposal of DA for NIT for 63352 bags without the declaration by the Disposal Committee was not in order and Shri G.P.Srivastava, failed to challenge it, with the result that 25300 excess bags were notified to be sold out without these bags being declared unservicable by the Disposal Committee. The charge in para(1) of the charge sheet as such stand proved against the official.

In regard to item (2) of the charge sheet Shri G.P.Srivastava has categorically admitted it stating that it was a clerical mistake. He however also failed to check it as a supervisory officer while initialling the entries in the register.

In regard to item (3) of the charge sheet Shri G.P.Srivastava has not stated any thing specific except that the file was submitted to Supdt. PSD at each stage, who shared the same responsibility as he is not checking the irregularity. Indirectly it is admission of charge on his part.

The concluding version of Shri Srivastava has no relevance with the specific charges. The Disposal Committee had declared only 38052 C.Bags as unservicable and the NITs were not proposed and issued accordingly.

The charges against Shri G.P.Srivastava are thus, conclusively proved for violation of Rule 3(1)(ii) and Rule 3 (2) of CCS conduct rules 1964.

I, D.N.Joshi, SSPDs Lucknow Divn. therefore punish him with stoppage of his next one increment for a period of 1 year without commulative effect.

G.P. Srivastava

(D.N. JOSHI)
Sr. Supdt. Of Post Offices,
Lucknow Division,
Lucknow-226003

Copy to: 1. The Official concerned. 2. PF of the Offl.
3. Punishment register. 4. Vigilance Statement.
5. Supdt. PSD LU 6. CR file 7. S.Book 8. Spard.

In the Central Administrative Tribunal

Circuit Bench, Lucknow

O.A. No: of 1990

Annexure 28

R.P. Srivastava Applicant

versus

Union of India & Others Respondents

To,

Annexure 4

The Director Postal Services,
Lucknow Region,
Lucknow.

(Through proper channel)

Aties 62

True copy

R.P. Srivastava

Sub:- Appeal against the punishment order passed by the S.S.Pos, Lucknow Dvn. Lucknow vide his memo no. B/G.P. Srivastava, dated 5.2.1986/4.3.86 inflicting the penalty of with holding of one increment for one year without cumulative effect.

Respected Sir,

Being aggrieved with the above referred to punishment order passed by the S.S.Pos, Lucknow Dn. inflicting the punishment of withholment of one increment for one year without cumulative effect. I beg to submit this appeal to you goodself for justice and equity from your kind hand.

A brief history of the case is given as under :-

That while working as A.M.(R.D. B.) at the postal stores depot, Lucknow during the year 1981, the disposal committee notified 38052 canvas bags unserviceable. It is pointed out that the Supdt. P.S.D., Lucknow was one of the Chief member of the disposal committee. The N.I.T. could not be issued with in the prescribed period i.e. January, 1981 and therefore, the Supdt. P.S.D. desired in the month of May, 1981 to issue N.I.T. and personally asked me to put a draft of up to date u/s canvas bags. Thus a draft note was put up by the then dealing Asstt. which included upto date u/s canvas bags. Myself forwarded the draft believing that the Supdt. P.S.D., Lucknow himself being the member of the disposal Committee is aware of the entire situation and he himself had desired upto date figures.

As far as the figures 30853 noted as 300853 is concerned it is submitted that it was an error on the face of the record which could have been easily checked by the S.P.S.D. who was the Chief Member of the disposal committee as inflation of figures from 5000 to 50,000 is meaningless and could have been checked by him. So far my initials are concerned on the draft, it is submitted that it was just in rush of work and oversight. The mistake was not bonafide and there was nothing malafide on my part. So far as concealing the facts is concerned I again submit that how can I conceal any fact from the S.P.S.D. who was my immediate Boss and Chief Member of the disposal Committee. He was the final authority in every action and as such entire responsibility rests on him and if there was any mistake or irregularity he should have immediately pointed out and should have been returned

G.P. Srivastava Applicant
versus

Union of India & Others Respondents

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: : 2 : :

the file for resubmission.

True copy

Grounds of appeal

1. Altered 10
TR S. Srivastava

That the Disciplinary authority has erred in holding me responsible for putting a draft for N.I.T. for 63352 Nos. It was on the direction of the then S.P.S.D. as the previous N.I.T. dated 23.2.1981. could not materialised. The figure 63352 included upto date u/s/ canvas bags. Holding me responsible for the act of S.P.S.D. is most unjust and unfair.

2. That it is no charge if the mistake being clerical was bonafide. Nothing mala fide was there nor such heavy disposal ever took place. It was simply an error in the rush of work. The S.P.S.D. could have easily checked this mistake as the figures were too heavy.
3. It is strange that the charge no.3 has been too indirectly by implication. As per rules the charge must be proved directly and not by implication. It, is again asserted that the S.P.S.D. is not only to share the responsibility but he was wholly responsible for all lapses as he was overall incharge of the P.S.D. and also the member of the disposal committee. It will also be worth mentioning that the official who initiated the mistake and the officer whose final decision commissioned the irregularity have been ignored where as I have been made liable for the lapses.
4. That it, is worth mentioning that u/s/ Canvas bags were only disposed off and the amount was duly credited to Govt. There had been no loss to Govt. nor any amount was misappropriated.
5. That the punishment imposed is illegal and void abinitio.
6. That the appeal is within time.

In the Central Administrative Tribunal.

Circuit Bench, Lucknow

Annexure 30

O.A. No: of 1990

G.P. Srivastava Applicant
versus

Union of India & Others Respondents

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P R A Y E R

True copy

Attested

R. Srivastava

Wherefore it, is respectfully prayed that
the charges be dropped and the punishment imposed be
ordered to be set aside. For this act of kindness
I shall be obliged.

Thanking you,

Yours faithfully,

Encl: - One.

Srivastava
14/4/06
(G.P. SRIVASTAVA)

A.S.P.M. A. PARK P.O.
LUCKNOW.

Srivastava

In the Central Administrative Tribunal
Circuit Bench, Lucknow

O.A. No. of 1990

Annexure 31

G.P. Srivastava Applicant

versus

Union of India & Others Respondents

GOVERNMENT OF INDIA
DEPARTMENT OF POSTS

Annexure 5

OFFICE OF THE DIRECTOR POSTAL SERVICES
LUCKNOW REGION, Lucknow.

Memo No. RDL/APP-92/86/13

Dated at Lucknow: Nov. 30, 1986.

This is the appeal dated the 14.04.86 from Shri G.P. Srivastava, formerly Asstt. Manager Postal Stores Depot, Lucknow and now ASPM Aminabad Park PO against the penalty of withholding of one increment for a period of one year without cumulative effect imposed vide memo No. B/GPS dated the 04.03.86 of the Sr. Supdt of Post Offices Lucknow Division. The appeal is not time barred.

2. Shri G.P. Srivastava was alleged to have violated Rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules 1964 as he failed to maintain absolute integrity and devotion to duty in that he committed the undermentioned irregularities as Asstt. Manager (RBD), PSD Lucknow between May 1981 and January 1982.

(i) He got notified for sale of 63352 unserviceable canvas bags in Notice Inviting Tender under No. SD/566/U/S. Bags /80-81 dated the 29.05.81 while only 38052 bags were declared as unserviceable by the disposal committee on the 03.01.1981. Thus 25300 bags in excess of those approved of by the Disposal Committee, were notified.

(ii) He overlooked the incorrectness in the figure given as 300853 by the RDB Clerk for number of unserviceable bags on hand, while actually it should have been shown as 30853 on the 01.12.1981, in the stock register and this incorrectness was not challenged by him till 13.12.1981.

(iii) He placed a draft N.I.T. with an office note dated the 15.01.1982 in File No. SD/566/U/S. bags/80+8 for sale of 243555 unserviceable bags when the Disposal Committee had not so assessed and declared such number of bags as unserviceable.

3. I have carefully gone through the appeal and all other relevant documents, papers and file. I find that

(i) In his statements of defence and the appeal, the appellant had contended that in the allegation of overlooking he noted figure of 300853 instead of 30853 the irregularity was blown out of proportion, as it was only a clerical error. As regards the other two allegations the burden of his defence is that the Sr. Supdt PSD Lucknow was equally responsible for the incorrect issue of N.I.T.

(ii) The main point is that the appellant negligent of his work i.e. Asstt. Manager (RBD) has contributed to the issue of bags for sale in excess of

the allegations have been uniformly accepted by the supervisory officials, and his negligence in the issue of unserviceable bags for sale is due for such sale

True copy
Attested

TR & Srivastava

Srivastava

- 2 -

as per procedure i.e. as approved by the Disposal Committee. The appellant had not rebutted this point of charge i.e. lack of devotion to duty. As regards the question of integrity the appellant had contended that there was no sale of serviceable bags. I agree with his contention as the punishing authority has also not made any adverse point having a bearing on the appellant's integrity in the memo of charges or of record of punishment.

(iii) Further a point made by the appellant in his appeal cannot be brushed aside. The ultimate authority who issued the M.I.T. is the Supdt Postal Stores Depot, Lucknow. He should have equally ensured that only so many number of unserviceable bags as were assessed and approved by the Disposal Committee in its meeting on the 03.01.81 were notified for sale. His having been a member of the disposal committee places on him all the more greater responsibility on him before issuing the notice for tenders, as he cannot have any plea of ignorance of the recommendation of the Disposal Committee. Even if he had not been a member the officer has a greater responsibility in such matters as the executive authority of the government. Having been a member of the Disposal Committee with his full knowledge of the assessment of the number of unserviceable bags he should have exercised greater control and caution. These observations are not relevant to the charges and they do not wash away the responsibility of the appellant and his share of failure to discharge the responsibility is established.

4. In view of the above, I am inclined to interfere in the orders already passed and to partially admit the appeal.

5. I, therefore, in exercise of appellate powers hereby partially admit the appeal and modify the penalty of stoppage of increment for one year without cumulative effect to that of CENSURE.

(Signature)
(B.P. Singh)
Director Postal Services
Lucknow Region Lucknow

REGD AD:

Copy to:-

1. Shri G.P. Srivastava, ASPM,
Aminabad Park, Lucknow.

2. 4: SSPOs Lucknow for onward disposal.
5: Office copy.
6: Spare.

True copy

Attested

R. S. Srivastava

Srivastava

Circuit Bench, Lucknow

Annexure 34

O.A. No: of 1990

G.P. Srivastava Applicant

Union of India & Others Respondents

Department of Posts, India.

Annexure-7

Office of the Superintendent, Postal Stores Depot, Lucknow 226001.

Memo No. P.D. 8115/2000-4/88

The undersigned proposes to hold an enquiry against Shri G.P. Srivastava under rule 14 of the central civil services (Classification control and Appeal) Rules 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III and IV).

2. Shri G.P. Srivastava is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri G.P. Srivastava is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of rule 14 of the CCS (CCA) Rules 1965 or the orders / directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri G.P. Srivastava is invited to rule 20 of the central civil services (conduct) rules 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Govt. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri G.P. Srivastava is aware of such a representation and that it has been made in his instance and action will be taken against him for violation of rule 20 of the C.C.S. (C) Rules 1964.

6. The receipt of the Memorandum may be acknowledged.

note kept in copy to

Superintendent
Postal Stores Depot,
Lucknow 226001

2. Vigilance

OA. NO: of 1990

g.p. Srivastava

Applicant

ve + sus

Union of India & Others

Respondents

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.....I.....

Statement of article of charges framed against Smt
G. . Srivastava A.(Forns) P.S. Lucknow.

...

WILLI

[illegible]

Article II

That the said Sir J. L. Drivas was while functioning on the aforesaid post during the aforesaid period is alleged to have failed to detect casting of iron balance of money - visible - on 11.12.31 in the Court House of 191 at page 179 of the said P.L. 191 and for the said 191 at 199 Lucknow as 300353 on a instant 30953 on a instant 30953 on the said notice in an order of sending official and thereby failed to take the necessary steps to arrest him under the provisions of the 3(1)(ii) of 191 (Conduct) Rules 1961.

article XII

That I had said that I had not yet seen the draft of the order on the aforesaid post dated 10/1/83. I had said that I had to have filed to point out the fact that the draft was about 24255 unserviceable. I was noted by him in the draft HR No. 24/566/US/1/83 dated 10/1/83 at 74/c of budt. I was also noted by him in the draft HR No. 24/566/US/1/83 dated 10/1/83 through his note dated 10/1/83 at 28/1 of the aforesaid file that those books were not examined and constituted a major committee before taking up the case for their disposal and thereby failed to show devotion to duty as required of him under the provisions of Rule 3(1) (ii) of CCS (P) Rules 1964.

ARTICLE II

Statement of imputation of neglect or misbehaviour in support of the article of charges framed against Shri G.P. Srivastava A.M. (Forms) P.S.D. Lucknow.

...

Article No. I.

That the said Shri G.P. Srivastava while functioning on the post of Asstt. Manager (RDB), O/O Supdt. Lucknow during the year 1981 put up to the Supdt. P.S.D. a draft MIT for disposal of 63352 unserviceable C bags at 1/c in Supdt. P.S.D. file No. SD/566/J.S bags/80-81/32-81 vide his note dated 29.5.81 at 1/N of the said file. While doing so he failed to point out the Supdt. P.S.D. that only 33052 C bags were declared as unserviceable as per minutes of disposal Committee dated 14.1.81 at 2/N of Supdt. P.S.D. file No. SD/566/RDB/1980-81 resulting in inclusion of 25300 excess bags for disposal which were not examined by the aforesaid disposal committee and therefore he is alleged to have failed to maintain devotion to duty as required of him under the provision of Rule 3(1) (ii) of CCS (Conduct) Rules 1964.

Article II

That the said Shri G.P. Srivastava while functioning on the aforesaid post during the aforesaid year made his initial in capacity of checking official on 1.12.81 in the stock Register of RDB at page 179 against entry of unserviceable bags received and their balance noted by Shri D.K. Chatterji the then RDB clerk P.S.D. Lucknow without actually checking the worked out balance which should have been only 30853 instead of 300353 written by said Shri D.K. Chatterji, which caused casting of balance of incorrect unserviceable C bags supported with initials of said Shri G.P. Srivastava in the aforesaid stock register upto 23.12.81. The total no. of unserviceable bags as entered in aforesaid RDB register at page 179 on 30.11.81 was 30018 only 853 bag were received on 1.12.81. Therefore the correct balance was only 30853 instead of 300353 as noted by the R.D.B clerk. The said Shri G.P. Srivastava while signing the aforesaid RDB register in capacity of checking official is therefore alleged to have failed to detect the incorrect balance of unserviceable bags and thereby failed to maintain devotion to duty as required of him under the provisions of rule 3(1)(ii) of CCS (Conduct) Rules 1964.

The copy

attested

R.S. Srivastava

K. Nagasawa

Article III

That the said Shri G.P. Srivastava while working on the aforesaid post during the year 1982 put up at draft NIT No.SD/566/US bags/81-82 dated 19.1.82 at 74/c of Supdt. P.S.D. Lucknow file No.SD/566/US bags/80-81 /82-83 for disposal of 243555 unserviceable canvas bags through his note dated 19.1.82 at 28/N of the aforesaid file without the bags having been declared unserviceable by the members of disposal Committee constituted vide PMG UP Lucknow letter No.Tech A/M-5/124/80 dated 20.2.80 received at 107/c of Supdt. P.S.D. Lucknow file no. SD/566/78-79-79-80 . The said Shri G.P.Srivastava is thus alleged to have failed to point out the Supdt. P.S.D Lucknow about the number of bags noted by him in the aforesaid draft NIT having not been examined by the aforesaid constituted disposal committee before taking up the case for disposal of such bags, and thereby failed to maintain devotion to duty as required of him under the provision of Rule 3(1)(ii) of CCS (Conduct) Rules 1964.

The copy

Attested

TR S. Srivastava

...
Supdt. Postal Stores Depot,
Gaza, Lucknow-226001

Srivastava

In the Central Administrative Tribunal,

Circuit Bench, Lucknow

Annexure 38

DA. No: of 1990

G.P. Srivastava Applicant *Agv*

versus

Union of India & Others Respondents

III. CLAUSE III.

List of documents by which the articles of charge framed against Shri G.P. Srivastava as to. (Serials) ... Lucknow are proposed to be sustained.

..

- ✓ 1. Draft NCR at 1/c of Bd dt. 1.3.81. File No. 50/566/US/Basis/80-81/82-83.
- ✓ 2. Office note dated 29.5.81 at 1/N of updt. ~~msbr~~ PGO file no. 50/566/US/Basis/80-81/82-83.
- ✓ 3. Minutes of disposal committee dated 14.1.81 at 2/N of updt. P. G. O. Lucknow file no. 50/566/80/1980-81.
- ✓ 4. Nos 179 of select register of 1981 of Bd dt. 1.3.81 Lucknow containing dt. 1.12.81.
- ✓ 5. Draft NCR 50/566/US/Basis/81-82 dated 19.1.82 (74/c of Bd dt. 1.3.81 Lucknow file no. 50/566/US/Basis/81-82/83-84).
- ✓ 6. Office note dated 14.1.82 at 2/N of Bd dt. Lucknow file no. 50/566/US/Basis/81-82/83-84.
- ✓ 7. P. G. O. Lucknow letter no. 107/1-5/124/80 dt. 2.1.82 (107/c of Bd dt. 1.3.81 Lucknow file no. 50/566/74-75/76-78).

..

IV. CLAUSE IV.

List of documents by which the articles of charge framed against Shri G.P. Srivastava as to. (Serials) ... Lucknow are proposed to be sustained.

.....

True copy

Attested

R. S. Srivastava

Srivastava

Shri
अधीक्षक, डाक भवन
Supdt. Postal Stores Depot,
मथुरा, Lucknow-226001

Annexure 8

In the Central Administrative Tribunal
Circuit Bench, Lucknow

O.A. NO: of 1990

Annexure 39

R.P. Srivastava Applicant

versus

Union of India & Others Respondents

Original given to L.O on 16-6-88

Annexure 8

To

The Supdt.

Post & Telecom Dept.

Ref: yr memo no. Lep/5/1988 / Dis/1/88 dated 2-1-88

SL

A kind response is invited to the
memo cited above. In this connection, it is
referred that the charges levied against the
are base-less, hence denied.

Recd

Copy 10-1-88

R/c Sh. Jang

DL 10-1-88

SA G.P. Singh

WDL

True copy
Allotted
R. & Srivastava

Srivastava

In the Central Administrative Tribunal
Circuit Bench, Lucknow

O.A. NO: of 1990

Annexure 40

G.P. Srivastava Applicant
versus

Union of India & Others Respondents

65

Department of Posts, India.

Annexure 9

Office of the Superintendent, Postal Stores Depot, Lucknow.
Memo No. PSD/Staff/Disp-4/88- dated at LW-1 the 18.1.89.

Where as an enquiry under rule 14 of CCS(CCA) Rule 1965 is being hold against Shri G.P. Srivastava A.M. Form P.S.D. Shivajimarg Lucknow.

And where as the said Shri G.P. Srivastava, has denied the charges levelled against him, the undersigned considers that an enquiry officer should be appointed to enquire into the charges framed against Shri G.P. Srivastava.

Now therefore, the undersigned in exercise of powers confirmed by sub rule (2) of the said rule hereby appoints Shri K.C. Misra S.S.P.O.s Faizabad on deputation as Mela Officer Allahabad as enquiry officer to enquire into the charges framed against the said Shri G.P. Srivastava.

(Raj Deo)

Superintendent,
Postal Stores Depot, Lucknow.

Copy to

1. Shri G.P. Srivastava A.M. Form P.S.D. Shivajimarg, Lucknow 226019.
2. Shri K.C. Misra S.S.P.O.s Faizabad on deputation as Mela Officer Allahabad (Enquiry Officer) with copy of charge sheet and annexure I & IV. He is requested to complete the enquiry before the date of retirement of the official i.e. 31.8.89.
3. Shri K.C. Misra S.S.P.O.s Faizabad on deputation as Mela Officer Allahabad (Enquiry officer.).

True copy

Attested

T.R. Srivastava

Srivastava

In the Central Administrative Tribunal
Circuit Bench, Lucknow
OA. No. of 1990
g.P. Srivastava Applicant
versus
Union of India & Others Respondents

To,

The President of India
NEW DELHI.

Annexure 1C

(THROUGH PROPER CHANNEL)

Sub: Special petition against the order contained in
Deptt of Posts No. 7-30/03-VIG-II dated 29.9.88
regarding donovo proceedings under Rule 14 of
CCS(CCA) Rules 1965.

X-X-X-X-X-X-X

Sir,

The humble petitioner submits as under on
the subject:-

1. History of the Case.

(a) The petitioner was served with a charge
sheet under rule 16 of CCS(CCA) Rules 1965 for
violation of rule-3 of CCS(Conduct) Rules 1964. The
Disc. authority considered the defence of the peti-
tioner and inflicted the penalty of stoppage of
increment for one year without cumulative effect.
The petitioner submitted an appeal to the appellate
authority and he modified the penalty to that of
censure.

(b) No notice for review was served upon the
petitioner. Still a review was held even after six
months vide order under petition on the ground that
allegations were not properly drafted and that the
penalty of censure was not commensurate with the
gravity of the charges and that donovo proceedings
may be hold under Rule 14 of CCS(CCA) Rules 1965
from the stage of issue of charge sheet. A copy of
the review order in question is enclosed herewith.

(c) Fresh charge sheet was issued under
Supdt. P.S.D. Lucknow No. PSD/Staff/Disp-4/88
dated 2.1.89, alleging violation of rule-3 of CCS
(Conduct) Rules 1964.

(d) Enquiry Officer and Presenting Officer
were appointed vide Supdt. P.S.L. Lucknow No. even
dated 18.1.89 and the Enquiry Officer fixed 1st date
of hearing on 15.2.1989.

2. The petitioner is due to retire on 1.8.89
which warranted this petition on the following
grounds.

True copy
filed

R. S. Srivastava

Srivastava

3. Grounds.

(a) There is no violation of any codified rule and as such violation of rule-9 ibid only is not tenable vide G.O.I. OM No. 11013/10/76-EST.A dated 7.2.77.

(b) There is no financial loss in the case.

(c) There is no case for misappropriation of Govt. money nor was there any bad intention on my part.

(d) The charge sheet issued to the petitioner is against the provision contained in Deptt. of Posts No. 15/48/87-VIG-III dated 17.12.87 (Initiation of Disc. proceedings) and I.O. 15.48/87-VIG-III dated 17.12.87 (Disc. proceedings under rule-9).

(e) As stated in para 1(a) above the punishment imposed on the petitioner to that of Censure on his appeal to the appropriate appellate authority ~~was sufficient~~ which itself was adequate enough to meet the end of justice.

(f) No doubt it is the ^{bounden} ~~bounden~~ duty of the Disc. authority to drag up proceedings early but the fact ^{remains} ~~stands~~ that looking to the date of impending retirement of the petitioner the rule-14 proceedings will not it is feared be completed in this short period with the consequences that :-

(i) The D.C.R.G. of the petitioner is likely to be with-held.

(ii) Once more rule -9 proceedings will be initiated.

(g) The petitioner has an unblemished record of service except this charge sheet, in this isolated case. This aspect of the case also requires consideration.

PRAYER

4. It is therefore prayed that the proceedings under Rule 14 of the CCS(CCA) Rules 1965 against the petitioner may kindly be ordered to be dropped so that the humble petitioner may not be subjected to mental agony unnecessarily and lead retired life peacefully.

Thanking you.

Dated: 2.3.89.

Yours, faithfully;

Brivastava
(G.P. Brivastava)
Asstt. Manager (Forms)
P.S.D., Lucknow-19

was reduced

True Copy

Attested

R S Srivastava

Brivastava

152
A/S
Copies to:-

1. The Supdt. P.S.D. Lucknow.
2. The SSPOs, Lucknow.
3. Chief P.H.G. UP Lucknow.
4. The Member (P), Deptt. of Pests, Delhi Khanna
New Delhi-110001.

Dated: 30.3.89

Govind
(G.P. Srivastava)
Asstt. Manager (Forms)
P.S.D. Lucknow- 19

True Copy

Attested

R. S. Srivastava

Govind

In the Central Administrative Tribunal.

Circuit Bench, Lucknow

Annexure 44

O.A. No: of 1990

G.P. Srivastava

Applicant

P/8

versus

Union of India & Others

Respondents

Annexure 1?

To:

The Member(P)
Department of Posts,
Delhi Division,
New Delhi.

(Through Proper channel)

True copy

Attested

G.P. Srivastava

Subj: Special petition against the orders of Deptt. of Posts No. 7-53/CS-VI-IX dated 29.9.89 re: do: do: proceedings under rule-14 of CCS(CCA) rule 1955.

SAC,

1. Kindly refer to my special petition dated 30.9.89 on the above subject.
2. I am due to retire from service on 31.8.89.
3. As the proceedings under rule - 14 Abid do not exist in against me as submitted in the special review petition under reference, the proceedings pending against me, may kindly be ordered to be dropped in order to save me from unnecessary mental agony and necessary action may be taken by the concerned authority for speedy disbursement of my pensionary benefits just after retirement and undue delay be avoided.

Thanking you.

Yours faithfully,

dt. 19.5.89

6/

G.P. Srivastava
(G.P. SRIVASTAVA)
Asstt. Manager (Post)
P.O.D. Lucknow - 19

Copy to:

1. The Chief P.O. UP, Lucknow.
2. The S.S. Post Lucknow-226005
3. The Supdt. of P.O.D. Lucknow-226005.

the

Circuit Bench, Lucknow

Annexure

OA. No: of 1990

45

E.P. Srivastava Applicant

versus

Union of India & Others Respondent

Annexure 12

प्रतिलिपि निदेशात द्वारा सेवार्यें लहानत होत्र लहानत के पत्रांक आरडोएल/पुआ की.
सम-1/13/89/13 लहानत दिनांक 24-7-89 जो कि श्री राजदेशा, अटोला
द्वारा एस्तु भांडार लहानत 226001 को प्रेषित थी कि प्रीत

दिनाय : श्री जी०पी० श्रीवास्तव, सहायक प्रबंधक ॥ फार्म ॥ पी एत डी
लहानत की त्पेक्षात पटीशान संवेंगी

संदर्भ : न०पीएसडी/हटेटमेंट / डिस्प-4/88 दिनांक 12-6-89

चूंकि त्पेक्षात पटीशान में ऐसा कुछ नहीं है कि उसका नियम

29॥ए॥ सी सी एस॥सी०सी०एस०॥ नियम 1965 के अन्तर्गत पुनरीहाण किया जा
सके। उतः निदेशात महोदय ने पटीशान रोकने को आदेशा दिव्याहै। कृपया
कर्मचारी को तदनुसार सूचित करें। निम्न अभिलेखा पावतु जिये जा रहे हैं।

संगन

ड० ॥ ए०डी यादव ॥
उप निदेशक

1- सेवा पुस्तिका

2- गोपनीय अभिलेखा

पत्रांक पीएसडी/हटाफ/डिस्प-4/88 दिनांक 31-7-89

प्रतिलिपि श्री गुरु प्रसाद श्रीवास्तव सहायक प्रबंधक फार्म द्वारा
सुपनार्च प्रेषित

cc'd on
4/8/89
up on leave.
14/8

Srivastava

Supdt. Postal Stores Depot
LUCKNOW-226001

S.P. Srivastava Applicant

versus

Union of India & others Respondents

Annexure 13

P 9

OFFICE THE DIRECTOR OF ACCOUNTS (POSTAL), LUCKNOW
NIDESHAK LEKHA DAK KARYALAY, LUCKNOW-226 001

Pen. IV DCRG/INT / PIV / PC 20 / 1990 / 15579
Date: 15.5.79

To:

The Superintendent
Postal Stores Depot
Lucknow

1. Retired on : 31.8.79
2. DUE to retire on
3. DIED ON

Subject : Intimation of DCRG Gratuity in favour of
Smt/Sri Gaur Prasad Srivastava
Ex. Assistant who will be drawing is drawing pension
from Ammabad B.L.P.O. under
L.W. C.R.O.

Reference : Your No. PSD/PC/1/C.L. Srivastava 11.4.79

Sir :

And sum of Rs. 29,700/- (Rupees Twenty nine thousand
and seven hundred only) being the
amount of DCRG Gratuity in favour of Smt/Sri Gaur Prasad Srivastava
may please be drawn and disbursed in accordance with Rule 65(2)
of the C.C.S. (Pension) Rules 1972 as amended read with Rule 63 ibid
after adjusting the Govt. dues (including immediate relief) and provl.
Gratuity sanctioned and paid if any referred to in Rule 71 and Rule 64 ibid.

2. The outstanding dues if any recovered may please be credited through UCR with appropriate details in facilitate proper classification of Accounts.
3. The amount of DCR Gratuity is debitable to 355G (4) DCRG Voted.
4. The payee is also being informed suitably.
5. The observations in the C.R. made in this case may kindly be kept in view before action upon this intimation.
6. The receipt of this letter may kindly be acknowledged.
7. The desbursing officer may kindly be instructed to quote this Inti.

No. in the payment voucher.

Accounts Officer (Pen.)

Postal Accounts Office, Lucknow.

No. Pen. IV DCRG/INT / PIV / PC 20 / 1990

Date: 15.5.79

Copy forwarded to Smt/Sri Gaur Prasad Srivastava

information She/He is requested to contact the
Superintendent, PSD, Lucknow in this regard.

Jr. Accounts Officer (Pen.)

For Director of Accounts (P) Lucknow

The Hon. Cont. & Administrative Tribunal,
Circuit Bench, Lucknow

OA. No: of 1990

Annexure

G.P. Srivastava Applicant
versus
Union of India & Others Respondents

47

To

The Senior Supdt. of
Post Offices,
Lucknow Mail,
Lucknow.

The Supdt.
P.S.D. Lucknow

Subject: Payment of amount of leave encashment on my
retirement on 31.8.89.

Sir,

With reference to your memo No. P.S.D./P.E.N./G.P. Srivastava
dated. 26.8.89. I beg to lay down the following few lines
for your kind consideration and favourable orders:-

1. That I have retired from service on 31.8.89 (A.M.)
as per your orders quoted above while a disciplinary
case under Rule 14 of the CCS(C.C.&A) Rules
already instituted against me has been pending.
From a close study of the case it would be observed
that there is no pecuniary loss involved of
any sort and as such no financial liability can
be fixed on me.
2. In view of this I am eligible for "encashment of
leave in full" on my retirement as there is no
possibility of any Govt. money becoming due
from the petitioner.
3. I would therefore, request you to kindly issue
sanction for payment of my "Encashment of Leave"
in full as expeditiously as possible.
4. I shall be highly obliged if immediate action
is taken to issue necessary sanction in this
regard.

Yours faithfully,

G.P. Srivastava
(G.P. Srivastava) 5/9
Retd. Asstt. Manager
Postal Store Depot (Form)
Shivaji Marg, Lucknow

Dated at Lucknow
the 5th September 89

In the Central Administrative Tribunal

Circuit Bench, Lucknow

DA. NO. of 1990

R.P. Srivastava vs. Union of India & Others

Applicant

Respondents

Government of India
Department of Posts.

Amended 15

Office of the Superintendent, Postal Stores Depot, Lucknow.

Memo No. PSD / Pca / GP, Srivastava dated at Lt-1 the 31.8.89

Sanction of the Superintendent, Postal Stores Depot, Lucknow is hereby accorded under rule 71 of CCS (Pension) Rules 1972 for the payment of provisional pension O.D. 900/- (Rs. Nine hundred only) plus DAR as admissible from time to time. for a period of six months w.e.f. 1.9.89 to Shri Gur Prasad Srivastava Assistant Manager Postal Stores Depot, Lucknow who is due to retire on 31.8.89 A.M.

The amount when paid should be charged under the head G/ Pensionary charge.

[Signature]
Superintendent
Postal Stores Depot, Lucknow.

Copy to

1. The D.A. Postal U.P. Circle, Lucknow 226010.
2. The Sr. Deputy Postmaster Lucknow Circle H.O. for drawal and disbursement of provisional pension as sanctioned above.
3. Shri Gur Prasad Srivastava C/O Shri G.D. Singh 122, Mata Sulaman Gadow Mulviganj Lucknow 226010.
4. Office copy & spare.

True copy

Attested

R. S. Srivastava

[Signature]
Srivastava

A/63

Circuit Bench, Lucknow.

Counter-affidavit on Behalf of Respondants

10

D.A. No. 248 of 1990

G.P. Srivastava

...

Applicant

Versus

Union of India and others

...

Respondants

I, D.D. Panday, aged about 56 years, son of Late ^{Shri} R.N. Pandey

Vigilance Officer in the Office of the Chief Post Master General, U.P.

Circle, Hazretgang, Lucknow do hereby solemnly affirm and state as under:-

7. That the deponent has read the application filed by Shri. G.P. Srivastava and has understood the contents thereof.

2. That the deponent is well conversant with the facts of the case deposed hereinafter.

3. That vide order dated 14.9.1990, this Hon'ble Tribunal had directed the respondents to file a short counter-affidavit to show cause how the review as mentioned in the impugned order dated 29.9.1988, Annexure-6 was maintainable under the provisions of Rule 29-A of the CCS(CCA) Rules, 1965. The respondents were also required to show cause why the interim relief sought for may not be granted.

4. That in the above context it is most respectfully submitted that the impugned order dated 29.9.1988 is in the nature of revision order passed by the President, revising the orders passed by the authorities below.

5. That the presumption of the applicant that the orders contained in Annexure-6 of the applicant have been passed by the President in exercise of the powers conferred vide Rule 29 A of the

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6/4

7/10

17/14

CCS(CCA) Rules is not correct. In fact the said order was passed by the President under Rule 29(I)(i) of the CCS(CCA) Rules, 1965. The entire proceeding of the case was carefully reviewed by the President and it was felt that the charges brought against the applicant were not properly drafted keeping in view the various aspects of the case and that the penalty imposed was not commensurate with the charges against the petitioner. Accordingly, the President in exercise of the powers conferred under Rule 29(I)(i) remitted the case to the disciplinary authority for de novo proceedings against the applicant under Rule 14 of the CCS(CCA) Rules, 1965 right from the stage of issue of the charge sheet.

6. That Rule 29 of the CCS(CCA) Rules, 1965 does not prescribe any time limit for making an order of revision by the President. The time limit of 6 months prescribed in sub-rule (I)(V) is applicable only to revision of an order proposed to be revised by the Appellate Authority which is not the case so far the present petition is concerned.

7. That during the proceedings under Rule 14, the applicant will have full opportunity to put an effective defence and as such any apprehension of denial of natural justice is completely ruled out.

8. That necessary orders with regard to payment of GPF and leave encashment to the petitioner have been issued vide order No. Vig/ M-1/13/89/13(L) dated 5.11.90. A copy of the said order is being filed as Annexure-R-I. The Death-cum-Retirement gratuity will be paid after the completion of the disciplinary proceedings.

9. That the respondents reserve the right to a detailed counter-affidavit at a later stage.

X
Deponent

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Verification

I, the deponent above named do hereby verify that the contents of paras 4 to 7 are true to my personal knowledge and those of paras 8 to 9 are based on records and legal advice. No part of it is false and nothing material has been concealed. So help me God.

Signed and verified 7th day of November, 1990
at Lucknow.

Dated 7-11-90

Deponent

I identify the deponent who has signed before me and he is personally known to me.

Advocate.

On
DP land
DE
[Signature]

ANNEXURE - R 1

OA 248/90

G.P. Srivastava 7/11/90

7/c

A/LB

कोर-7/Corr-7

भारतीय डाक विभाग

DEPARTMENT OF POSTS INDIA

आयुक्त/Office of the

Chief Postmaster General
U.P. Circle, Lucknow.

To

Shri Shiv Nath
Supdt. P.S.D
Lucknow.

No. VIG/M-1/13/89/13(L) Dt. at Lw-226001, the
5-11-90.

Sub:- OA No. 248/90 in CAT Lucknow. Case of Shri
G.P. Srivastava Retd. Asstt. Manager PSD
Lucknow.

The CFMG has considered the facts and
circumstances of the case and has ordered that
the withheld payment of GPF balance and leave
encashment be immediately paid to Shri G.P.
Srivastava preferably before 7.11.90 and
compliance reported.

5.11.90

(D.D. Pandey)
Vigilance Officer
for CFMG U.P. Lucknow.

In the Central Administrative Tribunal at Allahbad,
Circuit Bench, Lucknow.

Misc. Application No. _____ of 1990

M.P. No. 2/91 on behalf Respondents.

In

Case No. _____ of 1990

(- of Smt. Smt.)

Versus.

.... Applicant.

Union of India & Others..... Respondents.

APPLICATION FOR CONDONATION OF DELAY

The respondents respectfully beg to submit as under :-

1. That the written reply on behalf of the respondents could not be filed within the time allotted by the Hon'ble Tribunal on account of the fact that after receipt of the parawise comments from the respondents, the draft-reply was sent to the department for vetting.
2. That the approved written reply has been received and is being filed without any further loss of time.
3. That the delay in filing the written reply is bonafide and not deliberate and is liable to be condoned.

WHEREFORE, it is prayed that the delay in filing the written reply may be condoned and the same may be brought on record on which the respondents shall ever remain grateful as in duty bound.

Lucknow :

Dated : 7-1-91

(Dr. Dinesh Chandra)
Counsel for the Respondents.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

DELAITED COUNTER-AFFIDAVIT ON BEHALF OF RESPONDENTS

In

O.A.No.248 of 1990

G.P.Srivastava.....Applicant

Versus

Union of India & Others.....Respondents

I,.....D.D. Pandey..... aged about 57.....
years son of late Sri R.N. Pandey, Vigilance officer.....

in the Office of the Chief Post Master General, U.P.Circle, Hazratganj,
Lucknow do hereby solemnly affirm and state as under;-

1. That the deponent has read the application filed by Shri G.P.Srivastava and has understood the contents thereof. He is also well conversant with the facts of the case deposed hereinafter.
2. That it will be worthwhile to give a brief history of the case as under;-

-: BRIEF HISTORY OF THE CASE :-

A case of irregular disposal of unserviceable canvas bags in the Postal Stores Depot, Lucknow was detected some times in the year 1984. The applicant Shri G.P.Srivastava, the then Asstt.Manager (RDB) in the said establishment was found involved in the case alongwith some other gazetted and non-gazetted officials. The disciplinary action against the non-gazetted staff including the applicant was within the powers of the

Contd...2/-

Sr.Suptd. of Post Offices, Lucknow Dn., and Suptd. Postal Stores Depot, Lucknow whereas for disciplinary action against the gazetted officers involved in the matter was reported to Postal Directorate, New Delhi. The applicant was proceeded against under Rule 16 of the CCS (CCA) Rules 1965 vide charge sheet dated 1-12-84 and a penalty of with-holding of his one increment was awarded vide memo dated 5-2-86/4-3-86. The applicant preferred an appeal to the Appellate Authority i.e. Director Postal Services, Lucknow Region which was decided vide Director's Memo dated 30-11-86 reducing the penalty as "Censure".

Subsequently the whole case was reviewed by the President of India who in exercise of the powers conferred vide rule 29(1) (i) of the CCS(CCA) Rules 1965 issued order dated 29-9-88 to institute denovo proceedings under Rule 14 of the CCS (CCA) Rules 1965 against the applicant. Consequently a fresh charge sheet was issued on 2-1-89. The oral enquiry in the case is in progress with the Inquiring Officer and as such the issue of payment of final pension and DCRG to the applicant could not be decided pending final orders in the disciplinary proceedings. The payment of GPF balance admissible to the applicant could not be made so far as the Audit has raised certain objections with regard to the balance at credit of the applicant. The steps to remove the objections raised by the Audit have been taken. The leave encashment equivalent has been ordered to be released. The applicant was due to cross efficiency bar w.e.f. 1-11-88 but as the Presidential order dated 29-9-88 contemplated denovo proceedings against him, he was not allowed to cross efficiency bar, which will be considered on final outcome of the disc. proceedings.

1/1/89

—: PARAWISE COMMENTS :—

3. That the contents of sub para (1) of para 1 of the application need no comments. The contents of sub-para (2) are misconceived. It is clarified that the present case relates to Rule 29 (1) (i) of the CCS(CCA) Rules, 1965 and not to Rule 29-A as claimed by the applicant.
4. That the contents of paras 2 and 3 need no comments.
5. That the contents of paras 4.1 to 4.11 are admitted.
6. That the contents of paras 4.12 are admitted except that the copy of the order filed by the applicant as Annexure-6 is not a review order. It is an order in the nature of a revision order. The entire case was carefully reviewed by the President and it was found that the imputation of charges were not properly drafted and the penalty imposed was not commensurate with the charges proved against Shri G.P.Srivastava. Accordingly in exercise of powers conferred under Rule 29 (1) (i) of the CCS (CCA) Rules 1965, the President revised the orders passed by the authorities below.
7. That in reply to para 4.13 it is stated that the order referred to in the answering paragraph is not a review order. It is in the nature of a revision order which has been passed by the President in exercise of his powers under Rule 29 (1) (i) of the CCS (CCA) Rules, 1965. The said order does not suffer from any legal infirmity.
8. That in reply to para 4.14 it is stated that the order referred to in the answering paragraph is a revision order passed by the President under Rule 29 (1) (i) of the CCS (CCA) Rules, 1965.
9. That the contents of para 4.15 are misconceived. The President reviewed the entire case of the applicant suo-moto under Rule 29 (1) (i)

Contd..4/-

of the CCS (CCA) Rules, 1965 and felt that the charges brought against the applicant were not properly drafted keeping in view the various aspects of the case and, therefore, remitted the case back to the disciplinary authority ^{for} denovo proceedings against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. It was not only the order passed by the authorities below which was reviewed but the entire case was reviewed by the President for revision. It was not a review of the previous orders.

10. That the contents of para 4.16 are admitted to the extent that denovo proceedings under Rule 14 of the CCS (CCA) Rules, 1965 might from the stage of issue of charge-sheet have been ordered and that the earlier proceedings were completed under Rule 16 ibid. Rest of the contents are misconceived. It is, however, clarified that issue of a show cause notice is necessary only where the revising authority proposes to impose or enhance the penalty imposed by the authority below. In the present case denovo proceedings under Rule 14 ibid were ordered to be initiated where the applicant will have full opportunity to put an effective defence.

11. That in reply to para 4.17 it is stated that in the present case, the earlier charge-sheet issued under Rule 16 ibid was not dropped before another charge-sheet under Rule 14 ibid was issued. As matter of fact proceedings under earlier charge-sheet had been concluded. It was in compliance to the revision order passed by the President that denovo proceedings under Rule 14 were issued and a fresh charge-sheet was issued. As such no order for quashing the earlier proceedings was called for.

12. That the contents of para 4.18 are misconceived. The Rule 29 of CCS (CCA) Rules, 1965 does not prescribe any time limit for carrying out

revision by the President of an order passed by authorities below. The time limit of six months prescribed in sub-rule(1)(V) of the said rule is applicable only in respect of revision of an order by the Appellate Authority which is not the case in the present petition.

13. That the contents of para 4.19 are not relevant to the present case as the impugned order dt.29-9-88 has been passed in exercise of the powers conferred vide Rule 29 (1)(i) of the CCS (CCA) Rules, 1965.

14. That in reply to para 4.20 it is stated that as a result of revision ordered by the President under Rule 29, the applicant was served with a fresh charge-sheet under Rule 14 for alleged violation of rule ~~3(1)(i)~~, 3.1(ii) ~~and 3(2)~~ of the CCS (Conduct) Rules, 1964 ^{only} while the previous charge-sheet ^{was} issued for violation of Rule 3(1)(i) ~~and only 3(1)(ii) and 3(2) ibid.~~

15. That the contents of para 4.21 are admitted.

16. That in reply to para 4.22 it is admitted that Shri K.C.Mishra, SSPOs, Faizabad was appointed as Enquiring Authority vide order dated 18-1-89 to enquire into the charges framed against the applicant. It is, also not denied that the copies of the listed documents on the basis of which the charges were proposed to be sustained could not be supplied alongwith the memo of charges for administrative reasons because the same documents being common in other cases were in the custody of Inquiring Officer of those ^{Cases.} ~~of the Central Vigilance Commission~~ Letter No.101 DGP/3 dated 19-6-87 of the Central Vigilance Commission referred to by the applicant itself envisages that copies of the relied upon documents should be supplied alongwith the charge sheet as far as practicable meaning thereby that wherever it is not practically possible the copies/inspection

of the documents can be allowed at a subsequent stage. The proceedings against the applicant could not be finalised before his date of superannuation i.e. 31-8-89 due to unavoidable circumstances mentioned in the narrative of the case.

17. That in reply to para 4.23 it is stated that the presumption of the applicant that denovo proceedings under Rule 14 of the CCS(CCA) Rules 1965 have been instituted against him on the basis of Review Order dated 29.9.88 is not correct ^{and} as has been stated in earlier paras that the order dated 29-9-88 was a revisionary order and not a review order as stated by the applicant. It is also pertinent ~~instituted against him~~ to mention that the proceedings instituted against the applicant vide charge sheet dated 2-1-89, U/R 14 of CCS(CCA) Rules, 1965, have automatically become the proceedings pending under rule 9 of the CCS (Pension) Rules 1972 after his superannuation on 31-8-89.

18. That the contents of para 4.24 are admitted.

19. That in reply to para 4.25 it is stated that the presumption of the applicant that he has been punished for the same offence twice is based on misconception of facts. The penalty awarded through the proceedings U/R 16 against the applicant was quashed through the presidential order dated 29-9-88 and the fresh proceedings were initiated U/R 14 which have not yet concluded and as such the question of awarding punishment for the same offence does not arise.

20. That the contents of para 4.26 are not admitted. The presumption of the applicant that there was no case against him on 1-11-88 i.e. the date on which he was due to cross efficiency bar, is not correct in view

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of the fact that through the presidential order dated 29-9-68, disciplinary proceedings against the applicant were contemplated and as such he could not be allowed to cross the efficiency bar.

21. That the contents of para 4.27 are admitted only to the extent that the leave encashment of the applicant was withheld in view of the pendency of the disc. proceedings under the provisions of rule 39(3) of the CCS (Leave) Rules. The position was, however, subsequently reviewed by the Chief Post Master General, U.P. and ordered release of the leave encashment amount, under his disciplinary powers vide the aforesaid rules. So far as the question of withholding payment of DCRG is concerned, the action to that effect was taken in accordance with the provisions of rule 69 (1) (c) of the CCS (Pension) Rules 1972 which clearly lays down that no DCRG is payable during pendency of disc. proceedings U/R 14 of the CCS(CCA) Rules 1965 (Rules 9 of CCS(Pension) Rules in case of retired officials). The retirement benefits admissible as per departmental rules on the subject during the pendency of disc. proceedings have been allowed to the applicant.

22. That in reply to para 4.28 it is stated that the cause of grievance for the applicant arose on 30-9-1988 against the impugned order dt. 30-9-1988 and again on 3-1-89 when the charge-sheet dt. 2-1-89 under Rule 14 of the CCS(CCA) Rules 1965 was served on him. The applicant has prayed for quashing both the above orders. This part of the relief prayed for by the applicant is barred by limitation under Sec. 21 of the Administrative Tribunal Act, 1985.

Necessary orders for payment of GPF and leave encashment to the petitioner have been issued vide order No. Vig/M-1/13/89/13(L) dt. 5-11-90.

Contd.. 8/-

With regard to release of Death-Cum-Retirement-Gratuity it is stated that it could not be released as departmental proceedings under Rule 14 of CCS(CCA) Rules, 1965 are pending against the applicant and till final orders are not issued thereon, it is not payable under the provisions of Rule 69 (i)(c) of the Central Civil Services (Pension) Rules 1972. However, it is submitted that this Hon'ble Tribunal vide its order dt.9-11-1990 had ordered for the release of the Death-Cum-Retirement-Gratuity to the petitioner. Against the said order the deponent has filed a Review Application before this Hon'ble Tribunal.

23. That the contents of para 5 together with the Grounds have been adequately commented upon in the foregoing paragraphs.

24. That the contents of paras 6 and 7 need no comments.

25. That in view of the submissions made in the above paragraphs the reliefs sought for in para 8 are not admissible.

26. That in reply to para 9 it is stated that orders for payment of GPF and leave encashment have since been issued and payment of Death-Cum-Retirement-Gratuity is not admissible to the applicant till the finalisation of disciplinary proceedings initiated under Rule 14 of the CCS(CCA) Rules 1965 in accordance with the provisions of Rule 69 (i) (c) of CCS(Pension) Rules 1972.

27. That the contents of paras 10 to 12 need no comments.

DEPONENT.

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VERIFICATION :-

I,

do hereby solemnly affirm and verify that the contents of para 1 to

are true to my personal knowledge and paras 2 to 27

are based on records and on legal advise which I believe to be true,

and that I have not suppressed any material fact, So help me God.

Place:- Lucknow

Dated:- 21-9-91

DEPONENT.

I, identify the deponent who is personally

known to me and has signed before me.

J. (Signature)
ADVOCATE.

6/1/91
C
Sd/-
Dant
2/1/91

1.

U. S. No. 248 of 1930 (12)

Fixed for 13.3.31

G.P. Priv. Serv. Applicant
versus

G. Gov. of India Respondent

Rejoinder to ... of the Applicant in reply to ...
containing ... of response to.

The Applicant ... above most respectfully
states as follows:-

1. That the Applicant has read ...
the contents of the written ...
of response ... is well ...
and circumstances of the case ...
in fact.

2. That part 1 of the brief history of ...
is admitted.

3. That in reply to contents of part 2 of the
brief history of the case ...
President of India ...
proceedings under rule 14 of the CCA (CC.) ...
under the provisions of rule 20(1)(1) of CCA (CC.) ...
1935. At the time he could ...
authority which ... the order or ...
... such authority to ...
... consider proper in the circumstances of ...
case. The case of the Applicant is ...
his case is situated vide order dt. 20.3.33 ...
chargesheet had been issued on 2.1.1933. ...
was not empowered to issue orders for ...
... has been done in the case of ...
only order for ... could not ...
... orders dt. 20.3.33 were ...
cryptic ... could ...
of ... No ... is in progress ...
... the ... for ...
... of ... the Applicant ...
... the ...

28/1/41

15/1/41

3.11.90 and vide Sec. 13(4) of the Administrative Tribunal's Act 1985 the whole case is understood to be settled and should not proceed further. As regards payment of leave encashment of DCRG it is stated that both the claims have been paid to the applicant, the leave encashment was paid after issue of letter No. VLG/11/18/89-19(7) dated 5.11.90 issued by the Chief Postmaster General to Sri Shiv Nath, Superintendent. Paid back of DCRG was paid after the issue of orders of the Tribunal dated 3.11.90. As regards G.P.R. it is submitted that the same has not yet been paid. In case there were some merit objections the same should have been settled by now and payment released. The applicant was due to cross the efficiency bar with effect from 1.11.1988. It could not be withheld unless disciplinary proceedings were started. The disciplinary proceedings are deemed to have commenced on the day the charge-sheet is served on the delinquent person. In the case of the applicant the charge sheet was issued on 2.1.1989. As such there was no justification for withholding the efficiency bar due on 1.11.1988. The case of respondent was thus contrary to established law and settled law of the subject.

Part IV Comments.

4. In the reply to comments of para 3 of the counter-affidavit it is stated that orders of 2.1.89 were so worded that the same were deemed to have been issued under Rule 29 A of OCA (OCA) Rules 1965.

5. In the comments of para 4 & 5 of the counter-affidavit need no comments.

6. In the reply to comments of para 6 of the counter-affidavit it is submitted that President was not empowered to issue orders for de novo enquiry under Rule 29 (1)(1) of OCA (OCA) Rules 1965. He was empowered to issue orders for further enquiry. There is a world of difference between the two. In the case of further enquiry, it has been held in the case of Ramesh Chandra P. Versus Union of India (1989) 10 SCC 535 that the President does not provide for a de novo enquiry. It is held as well that Rule 29 does not confer any power on the competent authority to conduct enquiry de novo.

Amarendra

rule 13 for minor penalty to one under rule 14 for a major penalty. As such the revisional order of President under rule 29 would not be sustainable in law as far as de novo inquiry is concerned.

7. That the contents of para 7 are not admitted. Even the Revision order dated 29.9.1988 suffers from legal infirmity as stated in para 6 above.

8. That the reply given in para 6 of the counter-affidavit covers the reply to para 8 of the counter-affidavit.

9. That in reply to contents of para 9 of the counter-affidavit it is stated that even the revisional order could not be issued under rule 29 for de novo inquiry as held in R. K. Miller, Panch case cited in para 6 above.

10. That the contents of para 10 of the counter-affidavit are also received and are not admitted. The averments made in para 4.16 of the application are reiterated.

11. That the contents of para 11 of counter-affidavit are not admitted and the averments made in para 4.17 of the application are reiterated.

12. That the contents of para 12 of Counter-affidavit are not admitted. The averments made in para 4.18 of the application are reiterated. No reason for delay in review/revision has been explained. The case of M. R. Rao vs. President, CBR dated October 1987 (1) 113 575 is relevant for unexplained delay. The revision order has been rendered invalid and set aside for unexplained delay in revisional order.

13. That the contents of para 13 of the counter-affidavit need no comments.

14. That in reply to contents of para 14 of the counter-affidavit it is stated that the President was not empowered to issue orders for de novo inquiry under rule 29 of COB(CB) Rules 1935 and as such issue of charge-sheet under rule 14 was not justified and should be referred as null and void.

15. That the contents of para 15 of the counter-affidavit need no comments.

K. M. S. S. S.

10. The above is a true and correct copy of the original as shown to the undersigned by the person claiming to be the owner of the same.

17. The cost of the car 17

18. The above copy is to be retained in the office of the
Director, and the original copy is to be retained in the office of the
Director, and the original copy is to be retained in the office of the
Director.

10. At the close of each of years 13 and 14, the
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बदालत श्रीमान
(रादी) अपीलान्त

Central Administrative Tribunal

Cricket Ground, London

वकालतनामा

प्रतिवादी (रेस्पान्डेन्ट)

श्री

टिकट

(वादीअपीलान्त)

Central Administrative Tribunal बनाम प्रतिवादी (रेस्पान्डेन्ट)

नं० मुकदमा 248 सन 1990 पेशी को ता० 19 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री Dr. J. Prakash Chandra

Adv. Gen. Gopal Shanday Gopal, 2nd वकील

महोदय

एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नों पर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिग्री जारी करावे और रुपया वसूल रे या सुलहनामा व इकबालदावा तथा अपील निगरानी हमारी ओर से हमारे अपने हस्ताक्षर से दाखिल करें और तमदीक करे या मुकदमा उठावे या कं रुपया जमा करे या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवे या पंचनियुक्त वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वदा स्वीकार और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या अपने किसी पैरोकार को भेजता रहूँगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी बिलिये यह वकालत नामा लिख दिया प्रमाण रहे और समय पर काम आवे

नाम अदात
मुकदमा नं० नाम
फरीकन

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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सन 1990 ई०

स्वीकृत



भारतीय डाक विभाग
DEPARTMENT OF POSTS INDIA

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